

# RISE AND DEVELOPMENT OF THE ENGLISH CONSTITUTION

RESERVED BOOK

BIMANBIHARI MAJUMDAR, M.A. Ph.D.



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## PREFACE TO THE NINTH EDITION

The object of the book is to explain the development of the Constitution of England in broad outlines from the Anglo-Saxon age to the reign of queen Elizabeth II in such a non-technical language as can be easily grasped by an Indian student. While the treatment of the first part of the book is mainly historical in character, the second part is an analytical study of the actual working of the Constitution as it prevails at present.

It is highly gratifying to find that the demand for the book has increased more rapidly in the sovereign Republic of India than what it has been in British India. The eighth edition of the book has been exhausted within a year of its publication. Educated Indians now realise that the young democracy of India can successfully maintain its existence and develop on sound lines by imbibing the spirit of constitutional government of England.

The book was originally published in 1927 and since that date it has been used by successive generations of students. Additions and alterations are made in every edition in the light of publication of new materials and modification of customs, usages and institutions. The chapters on Administrative Tribunals, Civil Liberty and the Commonwealth have been re-written for the present edition.

I have received substantial help from my eldest son, Dr. Bhakat Prasad Majumdar M.A., Ph. D. head of the Department of History B. N. College, Patna University, in collecting the data for this edition. Sri Janaki Nath Basu M.A., Managing Director of Bookland Private Ltd. deserves thanks for promptly bringing out this edition.

Gola Daria<sup>pur</sup>

Patna 4

BIMANBEHARI MAJUMDAR

The 5th October, 1962



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## INTRODUCTION

### I. Salient Features of the English Constitution

The supreme achievement of England, her greatest contribution to the civilization of human race, has been the evolution of a form of government in which liberty has been reconciled to order and stability has been achieved without retarding progress. This form of government is known as Constitutional Monarchy or Parliamentary Monarchy. Its essential elements are (i) a hereditary but limited monarchy, (ii) a legislature, "broad based upon the people's will," (iii) the ministry, appointed from among the members of the Legislature, and (iv) the Electorate, which is now co-extensive with the whole adult population. The monarch reigns, but does not rule. He or she acts in all political affairs on the advice of the body of men, known as the Ministers of the Crown. The ministers form the real Executive of the state. The legislature acts as a creator of new Executives, and, at intervals, as a formidable check on the Executive's governmental activities. Parliamentary Monarchy has, thus, brought the will of the people to bear upon the administration of the country. Under this form of government, the Monarch cannot act without Ministers, or Ministers without the approval of the Commons, and the House of Commons is controlled by the ultimate authority of the people.

The chief feature of the English Constitution is the continuity of its development. It has not been manufactured by an all-powerful dictator, nor by a group of men sitting in a Convention or Constituent Assembly. [The English Constitution is the product of force of the influences which have been at work for thirteen successive centuries.] There has been no

Continuity of  
development

sudden break in it. Institutions of one age have been modelled on those of the preceding one. The Magna Carta is based on the Charter of Henry I ; the Charter of Henry I

is based on the laws of Edward, the Confessor, which again are based on the customs and institutions of the early Anglo-Saxons. The Petition of Right and the Bill of Rights are but the enlarged editions of the Magna Carta. The English

Constitution has broadened from precedent to precedent. In England, revolutions too, had been remarkably conservative in character. The Bill of Rights which was passed after the Glorious Revolution of 1688 was more recapitulatory than revolutionary in character. The Constitution of England has never been made, but like an organism it has developed from age to age.

The continuity of development of the constitution has been responsible for its appearance of unreality. "The English,"

Unreality of the Constitution writes the gifted French jurist M. Boutmy, "have left the different parts of their constitution just where the wave of History had deposited them ; they have not attempted

to bring them together, to classify or complete them, or to make a consistent and coherent whole." This is why the actual working of the constitution does not correspond to the wording of the legal statutes or to the legal theory. There has been no revolution in England for more than two hundred years. So the form of the Constitution remained the same, though its spirit has been changed much. The Statutes of Elizabeth II are couched in terms not greatly different from those employed under the Tudor and Stuart sovereigns. In the Acts of Parliament there is no reference to the Cabinet, to the unique position of the Prime Minister, to the party organization or to the influence of the electorate on Parliament. Bagehot rightly points out that an observer of the English Government "will see in the life much which is not in the books ; and he will not find in the rough practice many refinements of the literary theory".

The unreality of the English Constitution is partly due to the fact that some portions of it are still unwritten. The

An unwritten Constitution English Constitution, unlike the American and most of the continental Constitutions, is not written in one single document. It is based partly on Statute law, but more largely on Common Law, on precedents, conventions and understandings.

Hence it is generally called an unwritten Constitution. But a part of the Constitution is already written. The Great Charter of 1215, the Petition of Right of 1628, the Bill of Rights of 1689, and the Act of Settlement of 1701 are important Statutes which curtail the prerogative of the King. Personal

liberty of the subjects is guaranteed by the Habeas Corpus Act of 1679; the qualification of voters is defined by the Act of 1918 and 1928; the duration of Parliament and the relation between the House of Lords and the House of Commons are determined by the Parliament Acts of 1911 and 1949.) The Cabinet and the Prime Minister did not so long find any place in the Statutes of England; but an Act of 1937 fixes a new scale of salary for Ministers. "The person who is Prime Minister and First Lord of the Treasury" receives a salary of £10,000 a year. The same Act lays down that not more than 14 out of the 17 principal Ministers may belong to the House of Commons. The local government in England is carried on according to the Statutes of 1835, 1888, 1894, 1929 and 1948. These and other statutes, however, form only a small part of the whole Constitution. (The exact political function of the King, the relation between the House of Commons and the Cabinet, and that between the Cabinet, and the Civil Service are not to be found in any Statute.) (The English Constitution is largely an unwritten one, indeed, but it should be noted that even the most elaborately written Constitution has many unwritten elements.)

The distinction between a written and an unwritten constitution, and that between a rigid and flexible constitution is one of degree and not of kind. There are many grades between the absolutely rigid and the perfectly flexible constitution. As changes can be introduced in the English Constitution by the ordinary process of legislation, it is known as unfixed and flexible constitution. Sometimes the change is expected simply by the modification of usage. In 1863, Bagehot in his "English Constitution" emphasised the subordination of the Executive to the Legislature, but in 1908 Lowell in his "Government of England" said that the present tendency is the subordination of the Legislature to the Executive, especially in matters of legislation. But this change has not been effected by any formal statute. The change admirably illustrates the extreme flexibility of the Constitution.

The English Constitution is marked out from all other constitutions of the world by its legality and impartiality. Law is supreme in the English Constitution. No man can be punished without a proper trial before a properly constituted court. Udham



Singh, a Punjabee Sikh, was caught redhanded while murdering Sir Michael O'Dyer in a meeting of the East India Association in England on the 13th March, 1940. In any other country he would have been summarily put to death; but in England he was sentenced to death after a protracted trial. All men are equal before the eyes of law in England. There is no Administrative Law like that of France, and so the officers of the Government are subject to the same law and the same tribunal as ordinary persons. The liberty of the subjects and their rights are the sources of the law of the Constitution. The Petition of Right, the Habeas Corpus Act, the Bill of Rights and the abolition of the prerogative courts guaranteed the liberty of the subjects. The citizens have got the right to seek redress for any wrong inflicted on them.

## II. Sources of the English Constitution

It has been already pointed out that the Constitution of England has not been made or manufactured at any point of time. It has grown from precedent to precedent. The chief elements which constitute the English Constitution are the (i) great historic documents, (ii) Statutes, (iii) Judicial decisions, (iv) Common Law and (v) Conventions. One must study all these elements carefully to find out the principles of government obtaining in England.

The historical documents embody certain solemn agreements or engagements, which were made between the king and the people at times of great political crisis. These documents define and regulate the power of the Crown, guarantee the rights of citizens, and determine the relation between the Executive and the Judiciary. Such documents are the Magna Carta, the Petition of Right, the Bill of Rights, the Act of Settlement, the Habeas Corpus Act, the Parliament Act of 1911 and the Statute of Westminster 1931.

Some of these historical documents differ very little in the mode of their promulgation from the statutes, which are the second important source of the Constitution. Statutes The Secret Ballot Act of 1872 prescribing the use of secret ballot in voting, the Representation of

the People Act of 1918 and the Equal Franchise Act of 1928 regulating the suffrage, are ordinary statutes of the British Parliament, but these determine and regulate the working of the constitution. New governmental machinery is also created by Statutes. Thus the Municipal Corporations Act of 1835 and the Local Government Acts of 1888, 1894 and 1929 determine the composition and function of local bodies ; the Judicature Acts of 1873—76 fix up the structure of the Judiciary in England.

The third element of the English Constitution is to be found in the judicial decisions which explain the scope and limitations of the various provisions of statutes. Some of the most valuable constitutional rights are derived from judicial decisions. Thus the independence of Jury has been established by the decisions of Judges in *Bushell's case* (1670) and the immunity of Judges in *Howell's case* (1678).

The Common Law of England also forms a part of the English Constitution. The local, tribal or national customs, recognised by national, private or municipal courts, were the earliest forms of the Common Law. Later on, the customs were harmonized and consolidated by the courts, whose power emanated from the King. The prerogative of the Crown, the right of trial by Jury in criminal cases, the right of freedom of speech and of assembly, the right to redress of grievances against government officers rest on Common Law. Such rights have never been formally granted by the King or enacted by Parliament.

Lastly, the political usages or conventions play a very prominent part in the working of the British Constitution. The Conventions are very intimately connected with rules touching public affairs though they are not rules of law. They are called rules of constitutional morality, or constitutional practice, the customs of the constitution or constitutional understandings. The importance of conventions can be judged from the fact that even competent observers like Bryce and Baldwin admit that the description of the British Constitution at any particular time must necessarily be defective. According to Bryce, the British Constitution "works by a body of understandings which no writer can formulate."



### III. Conventions of the Constitution

Conventions or customs, usages or understandings of the Constitution are not written or fixed in character. They determine the mode in which the prerogative of the Crown or the privileges of Parliament, that is to say, the discretionary power left to these authorities, is to be exercised. They are usually obeyed, though they are not law and as such cannot be enforced by a court. Many of the constitutional practices

in England, as for example, that Parliament is convoked at least once a year, that it is organised in two chambers, that all measures passed by it must receive the assent of the

king before they become law, that the Prime Minister is the leader of the party having a majority in the House of Commons, that a ministry which has lost the confidence of the House of Commons must either resign or appeal to the electorate in a general election, owe their existence to conventions. The organisation and function of the Cabinet depend entirely on conventions. The conventions are constantly changing by a natural process of growth and decay ; hence it is impossible to make a complete list of conventions, prevailing at any specific period. The conventions that the King's speech to Parliament should be first approved in Council has been discarded.

Precedents become conventions when they are generally recognised as creating a rule. Mere practice or mere precedents are not enough to give rise to a convention. General recognition of a practice may be secured either by reason of a long practice or by means of a definite and formal agreement before the practice begins.

Some of the most important conventions are mentioned below. A Ministry which is outvoted in the House of Commons

is in *many cases* 'bound' to resign. The term 'many cases' signifies that resignation does not invariably follow the loss of confidence of the House. A ministry having

been outvoted on any question which it considers to be vital may appeal once to the country by means of a dissolution of the House of Commons. If an appeal to the electors goes against the Ministry, they are bound to retire from office, and have no right to dissolve Parliament a second time. The

responsibility of the Cabinet as a body to Parliament for the general conduct of public affairs is also based on convention.

The relation of Parties to the Ministry is determined by a long-standing convention. The party, which for the time being, commands the majority in the House of Commons, has the right to put their leaders in office. The most influential leader of the victorious party is usually appointed the prime minister by His Majesty.<sup>1</sup> This convention keeps parties active and well-organised. But at the time of any national crisis the king may request the leaders of different parties to forget their mutual hostility and form a National Government. Thus George V on his own initiative persuaded Ramsay MacDonald to form a National Government in the midst of the financial crisis in August 1931.

English Constitutional Law, which comprises rules affecting directly or indirectly the exercise or distribution of the sovereign power in the state, consist of laws and conventions of the Constitution. The Law of the Constitution proper is to be found either in Acts of Parliament or in decisions of the law courts. The Conventions, on the other hand, are not written, and are not, as such, enforced by the courts of law. If a ministry is defeated in the House of Commons and still does not resign, it cannot be prosecuted for this breach of convention.

It may be asked why the Conventions are obeyed if their breach is not directly punished by any court of law. Dicey holds that they are obeyed because a violation of these conventions will indirectly bring the offender into conflict with the courts and the law of the land. Though the convention that Parliament must meet at least once a year is not derived either from Common Law or from any statutory enactment, yet it is obeyed because the raising of funds by some taxes would be illegal without summoning the

<sup>1</sup> In 1939 Mr. Churchill was the Prime Minister but Mr. Neville Chamberlain was the leader of the Conservative Party. The reason for this was that under the stress of the war the Party Government gave way to a truly National Government and the Prime Minister did not like to identify himself with any single party.

Parliament every year. Again, the Army Act sanctions the existence of a standing army for one year only. If the Parliament is not called every year, it would be impossible to maintain the standing army without violating the law of the land as expressed in the Bill of Rights. The rule that the Ministry ought to retire on a vote of 'no-confidence' is usually followed because a breach of it would make it impossible for them to have supplies and to carry on the government without the support of the majority in the House. Dicey, therefore, comes to the conclusion that "the force which in the last resort compels obedience to constitutional majority is nothing else than the power of the law itself. The breach of a purely conventional rule, of a maxim utterly unknown and indeed opposed to the theory of the law, ultimately entails upon those who break it in direct conflict with the undoubted law of the land."

Breach of some of the conventions brings the violator, indeed, in conflict with law ; but when we find that the violation of other conventions does not produce any such consequence we cannot accept Dicey's explanation to be wholly satisfactory. Dicey himself admits that the violation of such conventions as that a bill must be read three times in a House before it is finally passed, will not bring the government into conflict with the law of the land. Moreover, if a ministry does not resign on a motion of 'no confidence,' it may not come immediately in conflict with law. When the financial legislation and the Army and Air Force Acts have been passed by the House of Commons by the beginning of July, the Ministry may remain in office without breaking the law at least until the following April. Thirdly, as Lowell suggests, "England is not obliged to continue for ever holding annual sessions of Parliament because a new Mutiny Act must be passed and new appropriations made every twelve months. Parliament, with its plenitude of power, could as well as not pass a permanent army act, grant the existing annual taxes for a term of years, and make all ordinary expenses a standing charge on the Consolidated Fund, out of which much is paid now without annual authorization."

Some writers are of opinion that the real sanction behind the conventions is the force of public opinion. Public opinion, however, changes with the change of circumstances. Under certain circumstances a particular convention might have been useful but later on it might become a mere formality. In such

a case the disregard of such a convention is overlooked or condoned by the public. Sometimes the moral force of public opinion is not sufficient to enforce obedience to conventional precepts. But usually the conventions are obeyed in the same spirit as the rules of the game are observed by players. Legislators and administrators are careful not to violate these conventions because they have been entrusted with authority on the understanding that they would maintain them.

#### ✓ IV. The Rule of Law

The characteristic features of the English Constitution are the sovereignty of Parliament and supremacy of law. The Rule of Law or supremacy of Law secures the legality and impartiality of the English Constitution. According to Dicey, the Rule of Law implies the recognition of three important principles.

The first principle is that, "no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of law." A citizen cannot be punished unless he makes a distinct breach of law and unless that breach is proved in the ordinary legal manner before the ordinary courts of law. This Rule of Law was not recognised in France under the ancient regime. A man could be arrested and imprisoned in France by a simple '*Letter de cachet*'. It secured recognition in England itself only after the Glorious Revolution. The first two Stuarts in England maintained illegal and arbitrary courts like the Court of Star Chamber, the High Commission Court, the Council of the Welsh Marches, the Council of the North, the Castle Chamber in Dublin and other prerogative courts. In these courts the alleged breach of law was not proved in the ordinary legal manner as the Jury were not allowed to sit in these. Thus in the Five Knights' case when the accused prayed for a Writ of Habeas Corpus, the Judges refused to liberate the knights on bail on the ground that they were detained by the special orders of Charles I. The Petition of Right protested vigorously against this abuse of royal prerogative and the Long Parliament abolished the prerogative courts. The Habeas Corpus Act of 1679 guaranteed and safeguarded the principle of personal liberty. The Act of

Settlement (1701) made the judges independent of the King and thus secured definitely the principle of 'legality' in the English Constitution.

The second principle of the Rule of Law is that, "no man is above the Law and every man, whatever be his rank or condition is subject to the ordinary law of the realm and amenable to the jurisdiction of ordinary tribunals." The ministers, who form the Government of the day, cannot do just as they please, they must exercise their powers according to the statutes of Parliament and conventions of the Constitution. They cannot plead the orders of the Crown as exempting them from liability for an illegal act. Like the ministers, a soldier or a policeman is also liable, like an ordinary citizen, to be sued for illegal acts and triable by the same tribunals. In France and in the countries under Dictators there is one court for the officials and another for the citizens. But in England the government officials are amenable to the law which regulates the relations of private citizens and to the courts which decide the cases of ordinary individuals. Any private citizen may seek redress for any injury or wrong inflicted by the Government officials in the ordinary court.

The third principle of the Rule of Law is "the fact that the rights of individuals are the source and not the consequence of the law of the Constitution." In America and in the continental countries the freedom of the individual is guaranteed by definite provisions of the written Constitution. In other words, the rights of the subjects are the results of the Constitution in these countries. Though these rights are guaranteed by the Constitution, yet the subjects must take legal methods to secure them, but these methods may or may not be forthcoming. In England, however, law has provided modes of procedure whereby a right is effectively secured ; in other words, the rights of the subjects are the result of the Constitution in these countries. If the Constitution or some of its clauses are suspended, the subjects would be deprived of legal protection against the Government. Even in normal times the subjects must take legal methods to secure these rights ; but these methods, may or may not be forthcoming. But in England law has provided modes of procedure



whereby a right may be effectively secured. In other words, the rights of the subjects are the source of the English Constitution.

The constitutional maxim that the king can do no wrong, seems, at first sight, to be an exception to the Rule of Law. The constitutional significance of the maxim is, according to Dicey, that the king is not liable for any act of his ministers but the ministers are liable for all public acts of the king.

This maxim has secured the responsibility of ministers to Parliament. So far as the King can do no wrong of private acts of the king are concerned he is not answerable to any earthly tribunal. The

Crown is, indeed, exempt from criminal prosecutions and from certain civil actions ; but the subjects may seek remedy by a particular process of Petition of Right in cases of debt or damage for breach of contract. In theory, the remedy is available as a matter of grace and not as a right ; but in practice it is really an action in law. A formal sanction of the Attorney-General is necessary and the same is never refused.

In recent times the Rule of Law has been modified to a certain extent. Certain Acts of Parliament have given judicial or quasi-judicial powers to officials and thereby diminished the authority of the Law Courts. The Public Authorities Protection Act of 1893 provides for the protection of officials from being sued. Similarly the Customs Consolidation Act of 1876, the Lunacy Act of 1890, and the Criminal Justice Act of 1925 protect certain classes of officers from being sued in ordinary courts. The National Insurance Act of 1911 establishes a body of Insurance Commissioners appointed by the Treasury who have got the judicial authority to decide all questions arising out of the claim of workmen. Moreover, distrust of judges and of courts is noticeable in the working of Trade Unions. In spite of this growing tendency to entrust some judicial functions to executive authorities, the Rule of Law is much more predominant in the United Kingdom than in any other State of the world today.

## CHAPTER I

### THE ANGLO-SAXON CONSTITUTION

#### I. The ancient German Polity

The origin of the English Constitution is to be traced from the settlement of the Angles and the Saxons in Britain rather than from the period of the Roman conquest.

Ancient German constitution      The towns of Britain had indeed, become Romanised during the four centuries in which she was a Roman province, but very little of Roman law and custom survived the withdrawal of the legions at the beginning of the fifth century A.D. The germs of the English Constitution are to be found mostly in the ancient institutions of the Teutonic immigrants. These institutions have been described by Julius Caesar and Tacitus and they show that the English people were accustomed to self-government from the earliest times.

At the time of Tacitus, Germany was divided among a number of independent tribes. Some of these tribes, as for example, the Angles had kings and a well-defined military class ; while others had not yet evolved kingship. Kings were elected from particular families. "The power of their kings," writes Tacitus, "was neither free nor unlimited." The king was rather the representative of the unity of the tribe than its ruler. He was neither the supreme judge, nor the legislator, nor the war-leader.

All the important affairs of the state like the election of king, declaration of war and peace were discussed and settled in the popular assembly. Every freeman had the right to attend this assembly. Any person could be impeached and tried for his life there. The assembly alone could inflict capital punishment. Magistrates or headmen, who were to preside over the local courts, were also elected in the popular assembly. Thus the people were the real sovereign in the state.

The aristocratic element was represented by a small council of chiefs or *princeps*. They prepared the agenda of the popu-

lar assembly and took initiative in bringing matters before the Assembly. Minor affairs were settled by themselves in their own council.

For the purpose of local administration the *civitas* or the state was divided into *vici* or village and *pagi* or districts. Justice was administered in the local courts by the elected headmen with the assistance of a hundred assessors.

Each district contributed one hundred fighting men to the national militia. A commander of the army, called the Duce, was chosen for the occasion, probably from among *princeps*. The *princeps* were attended by bands of noble youngmen, called *comites*, who were ready to sacrifice their life for their chief. Their relation to the chief was that of fealty and this later on contributed to the growth of Feudalism.

There were four classes of people among the Germans.  
 (1) The nobles, who had a larger share of land than the freemen and were preferred in the election of chiefs ;  
 Social Classes (2) ordinary freemen, who had lands and political rights ; (3) an intermediate class between slaves and freemen called the *Laet*. They had houses of their own and earned their livelihood by cultivating the land of their masters. But they had no political rights ; (4) the fourth class consisted of mere slaves, who were recruited from prisoners-of-war and persons degraded for some crime.

The land belonged to the *vici* or *mark* and was divided annually among the freemen. The pasture land was held in common by all the freemen. Thus the ancient German Polity was based upon the sovereignty of the people and developed the spirit of local self-government.

Some modern writers are inclined to attach little or no importance to the accounts of Tacitus. They believe that Tacitus satirized the degeneracy of the Romans under the guise of a description of the primitive virtues of a Utopian Germany.

Historical value of Tacitus' account "From this golden age" writes Pollard, "the Angles and Saxons are supposed to have derived a political system in which most men were free and equal, owning their land in common, debating and deciding in folkmoot the issues of peace



and war, electing their kings (if any), and obeying them only so far as they inspired respect. These idyllic arrangements, if they ever existed, did not survive the stress of the migration and the struggle with the Celts."

## II. Effects of the conquest of Britain by the Teutons

The Teutonic conquest extended over a hundred and fifty years and this proves that the invaders were neither very numerous nor well-organised. The eastern part of Britain was conquered more thoroughly than the western part, where the smaller bands of invaders had to allow the original inhabitants to live in comparative servility. A considerable Celtic element was absorbed, in course of time, in the Teutonic society.

The institutions of the immigrant Teutons were profoundly changed as the result of the conquest of Britain. The first effect of the conquest was the rise of kingship among those invading tribes, who had no king in Germany. The Britons offered them a strenuous resistance at the first stage of the conquest. The invading hordes lived as it were in a hostile camp and had to elect permanent war leaders. Moreover, the Anglo-Saxon began to fight one another before they were able to vanquish the common enemy. The war leaders soon combined with their military duties the office of civil rulers. Kingship developed from this union of offices. If war beget the king, continuous war between the tribes and races increased his authority.

Lands taken from the Britons were divided into two classes—Folkland and Bookland. When the title to the possession of land depended upon witness of the people and common fame, the land was called Folkland. Folkland was the land which remained under the unwritten customary law and over which no right, based upon a written charter or *book*, had passed. *Bookland* was held under a book, charter or written document. The characteristic feature of Bookland was that it was especially under the protection of the king, the Witan and the Church, and that it could not be called in question in any court lower than the Witenagehot. Bookland could be alienated with the express or implied consent of the donor and was liable to revert to the king if the holder neglected such

services as still lay upon it or died leaving no heirs. This system of land-holding further increased the power of the king.

Another effect of the conquest was the increase in the number of slaves, as many of the conquered Britons were reduced to slavery. For some time the same class which had existed in Germany continued to flourish in Britain too. But soon after the rise of kingship a new class of nobility of office called the Thegns arose.

### III. Constitutional Effects of the Conversion of the English

The conversion of the English to Christianity produced important constitutional results in England. With acceptance of Christianity, England was brought within the pale of the civilised society of continental Europe. But it should be noted that Christianity came to England through missionary efforts of the Pope and not from life in a Christianised empire. The consequence of this was that imperial laws and institutions could not come directly to England. But indirectly the laws and institution of the continent influenced the English life.

England was divided into many petty kingdoms in the 7th century A. D. These kingdoms were generally hostile to one another. At first each little kingdom or sub-kingdom had a sort of church establishment with a bishop at its head. Theodore of Tarsus, who was Archbishop of Canterbury from 668 to 690 divided the country into seventeen dioceses each with a bishop at its head. Theodore also convoked two Church Councils to which representatives from different parts of England were sent. After the death of Theodore councils were held separately at Canterbury and York. These were attended by the bishops, abbots and many laymen of importance. The organisation of the Church supplied a new bond of union to a divided people. In the ecclesiastical realm, the Anglo-Saxons came to think themselves as one people, or at most divided into two provinces Canterbury and York. "A united Church", observes Warner, "gave the example for a united people; union under one Archbishop accustomed men to think

of union under one king, if they were alike in religion, they might well be alike in law and Government."

The Church entered into close relation with the civil organisation and the clergymen offered their services to the state. The clergy were subject to the jurisdiction of the Hundred and Shire courts and Improved administration the bishops and priests took a leading part in deciding cases. The church and monasteries were the depositories of learning in the dark age. They often helped the king in framing laws and carrying on the administration. The bishops were also prominent members of the Witan.

The last, though not the least, important of the political results of the conversion was that the monarchy gained a new sanctity from the clergymen. The clergy Increased prestige of the king anointed the king and performed the ceremony of coronation, which broadened the concept of kingship. The king came to regard himself not merely as a war leader but as the civil ruler, who was bound to keep order and promote his people's welfare. The increased prestige of the king can be inferred from the words of Alcuin who wrote at the end of the eighth century "in the king's righteousness is the common weal, victory in war, mildness of the seasons, abundance of crops, freedom from pestilence. It is for the king to atone with God for his whole people."

#### IV. Local Government

The German tribes, which settled in England, carried with them the spirit of local self-government. The Teutonic immigrants cared more for the affairs of their own district than about the affairs of the whole nation. They preferred to settle their affairs in their local assemblies. The local institutions were full of vitality and played the most important part in the government of the Anglo-Saxon people.

The lowest territorial division is believed to have been the township or vill, which is designated by Stubbs as "the unit of the constitutional machinery, the simplest form of social organization". But Ashley has shown that Township the name township was applicable to the inhabitants and not to the district itself. The inhabitants might have had their meetings at intervals

for the regulation of their common economic interests. A part of the land of the village was common pasture and another part was cultivated in common under bye-laws made by the township. "The township", says White, "while usually having some economic unity, was not a political division." But the township as a unit of public land had duties and liabilities. The priest, the reeve, and four other persons of each vill had to attend the ordinary courts of hundred and shire. Each vill was responsible for the arrest, the pursuit and safe custody of all suspected malefactors. It had also to keep arms ready for use. According to some authorities, the inhabitants of the township had their general meeting, held once a month, in which they made their bye-laws, settled petty disputes and elected their officers.

The territorial division higher than the township was Hundred. Each Hundred comprised a number of villages and served as the primary judicial unit. The History of the Hundred and of the Hundred-moot etymology of the name suggests that it was also, at one time, a military unit. But the extraordinary differences in sizes and contents of the Hundreds seem to show that they could hardly have been, in origin, military institutions. It is conjectured that, it was a patch of territory in the pastoral stage in which the members of a class fed their flocks and pitched their tents. The Hundred, at first, was peculiar to Wessex but in the tenth century it spread to other parts of England. "In assuming a joint responsibility", says Jolliffe, "for order and for the suppression of the most prevalent form of crime, the hundred was offering itself to the crown as, for many important matters, a juridical whole in a new sense. It was this legal unity, the guild quality, almost a legal personality, of the hundred, voluntarily assumed at first and subsequently enforced, that made the hundreds susceptible to the constant imposition of new obligations and to that system of amercements upon which much of the authority of the Norman kings ultimately rested."

From the tenth century the Hundred court began to meet usually every four weeks. The court was convened in early times by the Hundred's ealdor, but later on by a bailiff of the sheriff. Most of the free landholders of the Hundred attended the court and delivered judgment in cases brought before them.

It was competent to decide all sorts of cases ; and no appeal lay from it to a higher court. But the Hundred court often refused to entertain complicated cases, which were then carried to the Shire court. The Hundred-moot used to elect its own headman, called the Hundred-ealdor and sent twelve representatives to the Shire court.

The political life of the Anglo-Saxon age was centred in the shire. Shires in different parts of England had different kinds of origin. Some shires, as Kent, Surrey, Essex and Sussex were originally kingdoms, which having been annexed to Wessex became local divisions. Other shires, as Dorset and Somerset in Wessex, and Norfolk and Suffolk in East Anglia, represent early tribal divisions. It is not improbable that the West Saxon kings created as sub-kingdoms for their relatives the shires of a later date.

In southern England all the shires, except Cornwall, were definitely organised by the ninth century. The shires in the midland districts were created by Edward the Elder and Athelstan for military and administrative purposes. The shires north of the Humber, representing pieces of the ancient Northumberland and Strathclyde, were worked later on into the general administrative system by the Norman kings.

Though the shires were different in origin, yet their method of administration was similar to one another. Eadgar ordains that the shire court shall be held twice a year, that the bishop and ealdorman shall both be present and that secular as well as ecclesiastical justice shall be administered. The sheriff as the king's representative was the convenor of the court. In very early times the shire court might have been a thoroughly popular assembly attended by all freemen. But as the boundary of the shire increased, it became burdensome for the ordinary freemen to travel the distance to attend the court. When we get the first definite information regarding the formation of the shire court we find that there was no complete attendance of the freemen, and that men of importance in the shire regularly attended it. The reeve, the priest and four representatives from each township and the Hundred-ealdor and twelve representatives from each Hundred also seem to have normally attended the shire court. At first, the head of the shire was the Ealdorman, who was not infrequently the representative of



the extinct royal family of the shire. The ealdorman, theoretically a nominee of the king, but in practice a hereditary official, was placed in charge of the military force in one shire or a number of shires. As he began to appropriate more and more shire to himself, he found it difficult to attend the shire court regularly. So the sheriff became the president of the shiremoot. The sheriff was an officer appointed by the king to look after the crown land, to administer justice in the shire court, to arrest and punish criminals and enforce laws and commands of the king in the shire. The ealdorman collected and commanded the soldiers of the shire in times of war. But the sheriff as the representative of the ealdorman called out and commanded local levies.

The function of the shire court was partly administrative and partly judicial. Law-making was not a common occurrence in those days, but when a new law had to be proclaimed, it was done by the sheriff in the shire court. The jurisdiction of the shire court extended to almost every kind of suit, civil, criminal and ecclesiastical. In theory all the freemen attending the court formed the body of Judges, but in practice judgment was delivered by twelve senior thegns. There was neither a body of professional judges nor written codes. The president was not a judge but a moderator. He had absolute veto on all the acts of the court. The laws administered in it were unwritten customary laws.

"It is in the field of local government", says Adams, "that the most extensive and by far the most lasting contribution was

made by the Anglo-Saxons to the future constitution of their race". William the Conqueror, retained much of the fabric of this local government, as he was wise enough to realise that its destruction would weaken

his own power. These self-governing institutions were the chief means of keeping in check the power of his barons, and so he wisely decided to use them. During the Norman and early Plantagenet periods the kings had to rely on the English people as represented in their local government, against their unruly feudal lords. Henry II had his hand upon the people through the itinerant justices who visited the shire courts; through the local militia who were drilled by officers of the king; and through the jurors in the local courts of the country,

hundred and town. Edward I called upon the counties and certain towns and cities to send two delegates each to attend the meeting of the Great Council. Thus it was the Anglo-Saxon local government which ultimately gave rise to Parliament.

## V. Anglo-Saxon Kingship

The key to the history of the Anglo-Saxon period from the seventh to the tenth century is to be found in the increasing unity and strength of the central power.

Increase of  
Royal power

The authority of the central government was exercised by the king in consultation with the Witan and in accordance with custom and tradition. Before their conversion to Christianity the Anglo-Saxons had a limited, tribal and half-pagan monarchy. As western Britain had to be conquered by hard fighting, a large number of groups, each under its own independent leader, was formed. It was out of these petty leaders of tribes or groups that kingship was formed. In course of time the small groups began to coalesce into larger and larger groups. But it was difficult to extend these kingdoms beyond the tribal community. As the folkright of one tribe was invalid with the others, rule over an alien king could only be established and maintained by force. Aethelbald of Mercia was the first king to rule over alien tribes, claiming to be king "not only of the Mercians but of those neighbouring peoples over whom God has set me." The supremacy of Mercia passed to Wessex early in the ninth century. The smaller kingdoms like Kent, Essex, Sussex, and East Anglia gradually became shires. The power of the King began to increase as he came to rule over larger and more diversified population.

It has already been pointed out that the introduction of Christianity foreshadowed a new relation between king and folk. It made kingship a temporal vicariate of God and imposed on the people ties and loyalties stronger and more precise than those of paganism. One of the results of the conversion was the introduction of some Roman ideas of government. "Several instances are known in later Anglo-Saxon history," observes White, "where continental and originally Roman influences affected the action and ideals of kings. In the long-continued, the apparently fruitless attempts repeated

in almost the same from generation after generation, to bring criminals to justice and bolster up the weakness of the local courts, we see a struggling of kingship towards a higher realisation of itself." In the ninth century we find the king declaring that he will see that the people are not denied the justice that is due to them, that folkright shall prevail over force and fraud, that he will intervene when a plaintiff has been denied justice three times at home, and will deal with unjust reeves. During the next 150 years the king put an increasing number of offences under his personal ban and made them pleas of the Crown.

During the Danish invasion most of Northumbria and half Mercia, became the Danelaw. The powerful descendants of

Territorial sovereignty	Alfred conquered the lands seized and settled by the Danes and Norwegians, who became the king's men and entered into public peace.
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This finally converted the personal kingship into territorial kingship. The king had so long been the leader of his kins or those who were allied to the kin, but the Danes accepted him as ruler because they lived in the territory ruled by him.

At first an injury against the person or property of the king could be atoned for by money payment, though the payment was much higher than what had to

The King's Peace	be made in the case of offences committed against others. As the power of the king increased, the life of the king became of
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increasing value, until it reached a point at which harm done to his person could be atoned only by taking the life of the wrong-doer. This is the beginning of the law of treason. An offence against the king or his property or in his immediate vicinity came to be regarded as breach of the king's peace and punished with greater severity. The king's peace began to be extended to particular individuals, particular places like markets or highways, and particular days like feast days. The king himself punished the offenders against his peace and the fines thus levied went to the royal exchequer. The extension of the king's peace was a means of increasing the power of the king and of the central government.

The power of Anglo-Saxon monarchy was increasing indeed for some centuries, but this does not mean that at any time



it was absolute. The king was the anointed head of the state, Causes of the and the leader in war, but he was not the weakness of supreme law-giver nor the fountain of monarchy justice. People were governed by custom ; the king, as the spokesman of his people, was the protector or defender of the customary law. The life of the countryside, in the township, hundred and shire, went on practically without the king. These local bodies and the eorls and ceorls enjoyed innumerable immunities which were held inviolate by custom. The king and the witan could make laws indirectly by interpreting old customs to suit the exigency of the time. A recent Oxford scholar goes so far as to say that, "no tie bound the multitude of individuals to their king ; rather, they were tied in the network of natural kingship, and the loyalties and legal obligations of neighbourhood. Indeed, here lay such strength as the barbarian throne possessed, for upon it were projected the loyalties which made the common life stable. Bound in kindred, the folk saw in their king the purest and most jealously recorded ancestry of their race."

The king's peace had been extended only over some places and persons, and not throughout the kingdom. Assault and murder were acts of private wrong and not offences against the state. Law was chiefly administered in the district courts, which were folk-moots, and where the judges were the men of the countryside, and not the representatives of the king.

The king had no standing army and he had to rule over a military people. As the Government possessed no proper roads, no regular means of communication and no police force, it was impossible to enforce royal protection adequately, or to check the centrifugal tendency to break up into parts under mighty nobles. Poor men had to turn to the noble of their own locality for protection, because the Government could not protect them. In the last century of Anglo-Saxon history, we find the ealdormen concentrating in their hands the control of various shire. Canute accentuated this process by dividing England into four great earldoms. Under the nominal rule of Edward the Confessor, the great earls of Wessex, Mercia, Northumbria and East Anglia fought for control of the monarchy. Thus the power of earls grew up at the expense of the royal power.

Another cause of weakness of the Anglo-Saxon monarchy was the extremely limited resources of the king. The king derived his income mainly from (1) his personal estate, (2) from the estate attached to the kingly office, called royal demesne, (3) from the fees and fines in some criminal offences specially reserved to the king, and (4) purveyance i.e. travelling expenses paid by the districts through which the king passed, (5) the king was entitled to the products of mines, salt works, treasure-trove, ship-wrecks and to tolls and profits of markets, (6) there was no regular taxation in the modern sense ; but in exceptional cases direct taxes were levied. Thus Ethelred the Unready levied a direct tax called Danegeld to buy off the Danes. Later on it became a regular tax. Taking all the sources of revenue together, king's income was small. There was hardly any distinction between the personal income of the king and the revenue of the State.

## VI. King and the Witan—the Central Government

The Central Government in the Anglo-Saxon age was carried on by the king with the help of the Witenagemot. The king was the representative of the nation and its elected chief. But the election was, in normal times, a formal affair. There was no special body of men to elect the king ; but the great men of the realm and such warriors and populace as had naturally gathered at the time of proclaiming him king, used to show their approval by acclamation. The king was usually chosen from the royal line, though in times of emergency a departure could be made. Within the covering principle of kinship ability, family arrangement and popularity produced a different solution at every vacancy of the throne. In certain cases the last king seems to have designated his successor, who was accepted by the people. There was no clear cut procedure for electing a king ; when there was any reason for departing from the royal line or direct succession, a more or less vague body of leading men, whose decision could not be resisted, used to acknowledge a person as king. On his accession the king had to take the oath that he would keep the Christian Church in peace, that he would prevent injustice and violence and exercise justice and mercy in all judgments.

It has been already stated that the power of the king was strictly limited by the customs of the kingdom. The usual limitations on the power of the king have been summed up

Limitations on the power of the king	as follows : "His power was subordinate to the customs of his people ; he could touch no free-man's heritage or life without a process at law which gave the freemen the right of
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defending his cause before his fellow-freemen ; he could make no law without his people's deliberate consent ; he habitually acted by the advice of his counsellors and wisemen, who formed his privy council as it were." But there was no clearly defined way by which the king's council could restrict the powers of the king. Much depended on the personality of the king. If he was strong, he could push his powers perilously near to an overriding of the limitations ; if, on the other hand, he happened to be weak, the Witan seemed to do all the governing. A brave and tactful king could evade the checks on his power and make himself obeyed throughout the kingdom.

An assembly of the chief men of the State, called the Witan or Witenagemote was associated with the king in the general government. The Witan, consisting of

Composition of the Witan	members of the royal family, officials, great warriors and nobles, correspond to the small
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council described by Tacitus. According to Freeman and Kemble it was "democratic in ancient theory, aristocratic in ordinary practice" ; that is to say, every freeman had the right to attend it, but the right had practically gone out of use at an early period. The Witan, at best can be regarded as the parent of the Parliament, but never as the Parliament itself. It was neither an elective, nor a representative body ; and it did not stand for the people's rights against the king. In the House of Lords of the present day certain well-defined categories of persons have the right to attend ; but no one could claim to have a right to attend the Witenagemote. It was a council of the wise, but, who was wise or not, was determined by the king. No official of the king or chief man of the kingdom had, as such, any right to attend it. The king could summon any one he liked. But his choice was not always entirely free. He had to call the holders of certain high offices and also those who were intimately connected with the Government of the country. Moreover, he had to call all whose advice he required

or whose wrath he feared. The voice of the Witenagemote was the voice of the nation only in the sense that there was no one else in the nation whose opinion was of any consequence. It was a small body, generally much below one hundred. Its sessions were not long or frequent ; but it met at least once a year.

In those early days there was no differentiation of functions. The king and the Witan formed the executive government, the highest court of justice and the authorised Functions of the Witan interpreter of the law and customs of the people. The Witan had a general consultative voice and right to consider every public act which could be authorised by the king. We have already described the part played by the Witan in the election of the king. Deposition was uncommon so long as the old dynasties were able to produce suitable candidates, but the Anglo-Saxon Chronicle records the deposition of Sigebert, from whom "Cynewulf and the Witan of the West Saxon took his realm for ill conduct." Aethelred, King of the Northumbrians was also deposed, imprisoned and restored on throne at the end of the eighth century.

The Witenagemote was the king's advisory body, and its consent conferred an added authority to any act of the king, whether it was the proclamation of a new code of laws, the making of a treaty with another king, or a royal grant of lands. The King administered justice with its consent and counsel. Its sanction was necessary for raising an army or declaring a war. The Church affairs, especially those in relation to state, were regulated by the King in the Witan. The King and the Witan had the power to appoint ealdormen and bishops and to regulate Church affairs. No direct tax could be raised without the sanction of the Witenagemote.

But the active exercise of these powers depended largely on the personal character of the king. If the king was a strong man like Alfred or Athelstan, he could lead the Witan wherever he wanted. The King summoned the Witenagemote and fixed the time and place of its meeting. He had to call the provincial heads like the ealdormen and bishops, but he could have his will by calling a large number of his own thegns. During the last days of the Anglo-Saxon period the authority of the Witan declined, as political power accumulated in the hands of a few great families of earls.

The whole business of the central government was as yet small. Legislation was no common event and the raising of extraordinary taxation was still more uncommon. So the Witenagemote had not as great power as it appears on paper. The lack of communication and facilities of transport, want of symbols of national unity and the habits of the people made the central government rather weak and ineffective. The interests of the people centred round the village; their "best" men travelled to the hundred and shire moot, but anything beyond these limits appeared distant and unreal to them. The Anglo-Saxons contributed to principles and methods of local self-government, but they failed to furnish the necessary complement, a strong central government, without which local freedom degenerates into anarchy.

## VII. Law and Justice in the Anglo-Saxon Age

The Anglo-Saxons were governed chiefly by customs. Each hundred and shire court administered the local unwritten laws unconsciously made by the people. But occasionally some kings put certain laws in writing. These written laws, which have come down to us, are not codes of all the laws prevalent in a kingdom at that time. The first instance of written laws is to be found in the collection of ninety dooms issued by Ethelbert of Kent in the seventh century. Towards the end of the century he published laws for Wessex, probably with a view to regulating the treatment of Welsh many of whom he ruled. Offa of Mercia made laws in the eighth century. The greatest law-giver of the age however, was Alfred, who codified the existing laws, selecting the best ones, making additions and modifications at places. Edward the Elder, Athelstan and Edmund made laws for preserving the peace of the kingdom, arresting criminals, prohibiting private wars and regulating the time of holding the different courts. Edgar was the first king to impose an elaborate scheme of precautions against theft and the disposal of stolen goods. "The following edict" he declared, "shall be common to every folk—Angles, Danes, and Britons in every quarter of my realm." Canute brought about the final and complete fusion of Danish law with the Anglo-Saxon laws.



If an accused person determined to contest the accusation, he denied it with a formal oath, usually supported by a number of oath helpers. Oath played such an important part in the judicial administration of those days because the local court

Oath and compurgation in civil cases

consisted of persons who knew one another. Moreover, a special sanctity was attached to oath by the early communities. If an accused hesitated to take an oath, or pronounced it in a faltering voice or made any mistake in taking it, his case was lost. The oath helpers, known as compurgators, were usually 12 in number. The value of the oath of these compurgators differed according to their rank. Thus the oath of an ealdorman was equal to the oath of six thegns, and the oath of a *thegn* equal to that of 12 ceorls or freemen. If the accused had a *hlaford* or lord, and bread-giver the latter might swear on behalf of the accused; otherwise the former had to go through the ordeal. The accuser also had to take an oath that he was not actuated by interested or vindictive motives.

If a person was caught red-handed or bore a notoriously bad character or a non-freeman failed to secure the testimony of his lord regarding his innocence, ordeal

Ordeal

was prescribed. Ordeal was believed to be an appeal to God, who would make the truth manifest. Ordeal by water and ordeal of hot iron were often taken recourse to with a view to determining the innocence or guilt of an accused person. In the ordeal by water the accused was bound hand and foot and thrown into a pool. If he sank out of sight he was considered innocent, if he floated up, he was declared guilty. In the ordeal by hot iron, the accused had to carry a piece of hot iron of prescribed weight up to a certain distance and the nature of his wound after a certain number of days determined whether he was guilty or innocent. In all serious cases of wrong-doing ordeal was resorted to in the belief that it was an appeal to supernatural knowledge. The Anglo-Saxon did not use the wager of battle which was also a sort of ordeal. As the test of ordeal was a severe one the accused often made compromise at the last moment. Ordeal as a mode of trial in criminal cases went out of use early in the thirteenth century.

In the Anglo-Saxon age there were no prisons, and capital punishment was rare. Nearly every kind of crime could be atoned for by a money payment made to the family of the injured person. The payment varied according to the status of the injured or offending party and according to the nature of the offence. The payment was known as *Wergeld*, which literally means valuation in terms of money. In the case of a freeman this payment was made to his kinsman and in the case of a slave it was paid to his master. As the power of king increased, he became entitled to a fine for the breach of his peace. In the later Anglo-Saxon age capital punishment was introduced for offences against the state or against the king as its representative.

### VIII. Social classes and their constitutional position

Anglo-Saxon community was divided into social grades, but there was no sharp line of distinction between one grade and another. The society was in a state of flux; individuals and families could rise up or fall down from the grade to which they were born. Four distinct classes can be recognised viz., nobles, common freemen, partially freemen and slaves.

The nobility consisted of *athelings* or princely kindreds, *gesiths* or warriors connected with the king by personal ties, and *thegns* or nobility of service. The Nobility *athelings* constituted the true nobility of blood and originally occupied the highest rank. The *gesiths* fought for the king, received considerable gifts of land and in course of time developed into a territorial nobility. But with the development of kingdoms they declined in importance and the *thegns*, the nobility in service gained in power and prestige. They had to keep themselves in constant touch with the shires and in many affairs occupied the same position as that of the king's reeve or sheriff. The leadership of the elaborate routine of arrest, process of serving, levying of distress, eviction for contempt of judgment, pursuit of outlawry, and hue and cry, lay upon the thegns who rode upon the court's errands and enforced its decrees. In the latter part of the Anglo-Saxon age they developed into a landed aristocracy about the grade of the later country gentlemen. The dignity of the thegn came to be closely connected with the possession

of landed property so much so that the possession of a certain quantity of land came to be regarded as a foundation of nobility. The ordinary freeman who acquired five hides (1 hide=120 acres) of land entered into the rank of thegnhood. An ealdorman or earl was required to possess at least forty hides of land. The nobles got the right of deciding cases within their jurisdiction. In these manorial courts the cases of non-freemen were usually decided and sometime those of freemen too were taken up. The nobility as such had no right to attend the Witenagemot, but the king selected the Witan from among the nobles. The higher posts in the Church and the Army were reserved for the scions of the nobility. A nobleman's wergild was six times as much and his oath in a court of justice carried six times the weight of those of an ordinary freeman.

The majority of the people were *ceorls* or non-noble free-men. In different parts of the country they were known as the *ceorl*, *sokeman* or *villanus*. Possession of one hide of land was regarded as a qualification for a freeman. The ordinary free-men were called upon to discharge such public responsibility as was likely to develop qualities of initiative, self-reliance and self-control. They constituted the local courts in which neighbours judged one another, though formal judgment was delivered through twelve senior thegns. They knew the customary laws and the amendments made from time to time by the King and the Witan. Local people were required to form themselves into police groups or *tithing* for the pursuit of criminals. Over and above these the freemen had to enlist themselves in the militia for the defence of the state.

The slaves constituted the lowest ladder in the social hierarchy. The number of mere slaves, called the *serve* was,

• according to the Domesday Book, 25000, or  
Slaves and Serfs nearly one fifth of the registered population.

A person was reduced to servitude in the events of being captured in war or being inextricably entangled in debt. The slave had neither land nor political rights. But intermediate between the slave and freeman existed a class of people who were called *Dæd* or serf. The serf was protected by law against physical violence or maltreatment by his master, and his responsibility to criminal law was maintained either



directly or through his master. The rank of the serf was strengthened on the one hand by the sinking into more and more complete economic dependence of freemen, and on the other by levelling up of the position of slaves. The slave in theory could not contract legal marriage, nor acquire any property, but in practice his master began to allot him cottage and a piece of land which came to be looked upon as his (slave's) own.

### IX. Feudalism and its germ in the Anglo-Saxon Age

Feudalism is the name given to "an organization based on land tenure, in which all men from the highest to the lowest are bound together by reciprocal duties of service and defence." In its economic aspect, it was the holding of land from a lord or superior on condition of rendering services to the grantor ; but these services were political in character. The vassal had to furnish soldiers to the lord, had to attend the lord's court, to help him in maintaining police order and to render obedience to him in general. By putting these services of the Vassal together the army was formed and the law court, council and legislature were ultimately constituted. In its social aspect feudalism ensured a close personal bond between the grantor of an estate and the receiver of it. In a full fledged feudal country, the king was in theory, the master of all the lands of the country ; he was the lord of lords and suzerain. There was so much of local variation, and difference between different individuals in rights and liberties that it would be a misnomer to call feudalism a system. "It would be impossible to overstate", writes White, "the confusion of the feudal relations ; vassals holding often of many lords with the problem of conflicting allegiances, great nobles holding from lesser nobles, cross relations of every sort, remnants of older forms of land holding and of an older society in general, and now and again foregleams of a new order towards which things were working."

A lord had the right to judge, tax and command the persons living on his estate. He lived like an independent prince in his own fortress. He had his own army, his own courts of justice, his own mint and treasury. Those who held land from him were princes on a smaller scale. The actual cultivators of

the soil were in the lowest grade of the social scale. The age in which ideas of nationalism and centralized government had not originated mainly on account of breakdown of means of communication, such an institution was necessary to safeguard life and property.

Feudalism grew up in western Europe after the conquest of the Roman provinces by the German tribes. It developed by very slow degrees, till it became something like a political system in the ninth and tenth centuries. In those turbulent days when life and property were very unsafe, rich men wanted to have followers and the common people desired to have some lord to protect them. Kings and lords granted lands to persons of inferior rank on condition of service. These grants were known as the giving of benefices. The common people, too, willingly submitted themselves to a powerful lord by a process called commendation. The man knelt down before him and promised to be faithful to him and the lord in return, promised to protect him. The feudal structure of government and land-holding weakened the power of the king.

Feudalism as a political system did not find a favourable soil in England, as the Anglo-Saxon kingdom never reached the degree of disintegration which the continental feudalism suffered. It did not exist in England as a complete system before the Norman conquest. But several germs of feudalism are to be found in the Anglo-Saxon age. The personal relation subsisting between the princeps and the comites in ancient Germany gave rise to a similar relation between the king and his gesiths in England. At first this connection was entirely unconnected with land but later on the king rewarded services of his thegns by making grant of *bookland* to them. At first the kings made grants of *bookland* to churches alone; then in course of time such grants began to be made to the nobles also. Folkland could not be alienated at the will of the holder, but *Bookland* could be alienated or left to the heirs by will. Grant of *Bookland* conferred certain rights *e.g.*, the right of taking fines when the grantee's men were fined in the local courts, the right of presiding over the hundred court, where a

whole hundred had been granted, and the right of being exempted from bearing public burdens. Both Folkland and Bookland could be conveyed by the holder to another person for a limited period, usually during the life-time of three successive holders. Such land was called loan land or laen land, as the grantor was still regarded its owner to whom the occupier was responsible for duties like military service. This looked like feudal tenure by military service, but in fact, the tenant did not hold it by the service, but merely assumed an obligation already resting upon the land. Military service at one's own expense was a political obligation of every freeman in the Anglo-Saxon community.

By a law of Athelstan every landless man was required to have a lord, at whose court he owed suit. It was difficult to bring the landless men to justice or to realise fines from them. The rich and powerful men of the locality, therefore, were required to perform the police duty of keeping order among the landless men. The landless freemen had, therefore, to

commend themselves to a lord. They thus, Commendation became dependent and the process by which free holding and not personal freedom became the qualification of political rights began. The practice of commendation became so widely prevalent that a landless man came to be regarded as an outlaw. Many circumstances forced to reduce freemen to the condition of dependent cultivators. Famine and pestilence impoverished many; the insecurity, consequent on the Danish invasion forced many freemen to yield the title of their lands in return for protection. The village communities granted to the thegns, became known as manors in the eleventh century. For the convenience of cultivation big landlords often granted lands to others as economic tenure.

During the rule of Edgar and Ethelred the ealdormen had begun to concentrate in their hands the Rise of baronial control of various shires. Canute did nothing class to check this centrifugal tendency; on the other hand, he divided England into four great earldoms, which resembled the feudal barony of the continent.

From what has been written above, it would be clear that feudalism as a *system*, not to speak of a political system, did not grow in the Anglo-Saxon age. The king was not yet regarded as the ultimate owner of all the lands nor did every

noble hold land of him. All the cultivators of the soil did not hold land from a superior lord. The holders of land owed military service as free men, but it was not the theory that they held on condition of military service. The lords had their own courts in which the civil and criminal cases of the landless dependents or serfs were decided by him or his bailiff; but the old communal courts—the Shiremoot and the Hundredmoot existed side by side with the manorial courts. Thus we find that economic feudalism prevailed in the Anglo-Saxon age; but political feudalism had not yet been established.

## CHAPTER II

### THE NORMAN PERIOD

William I 1066—1089 Henry I 1100—1135

William II 1089—1100 Stephen and Matilda 1135—1154.

#### I. Effects of the Norman Conquest

The Norman conquest did not bring about any violent change in the constitutional system of England. It cannot be regarded, in any way, a fresh starting point in the constitutional history of the country. In course of time Anglo-Saxon constitution would have developed to the result which was achieved suddenly by the Norman conquest. William the Conqueror was elected by the Witan to the throne ; and as the national king of England he wanted to maintain the institutions, so far as altered circumstances permitted him. When the Pope asked him to become his vassal, he replied that no Anglo-Saxon king had ever accepted the Pope as overlord. William did not consciously and deliberately introduce any change ; but some changes were made, because they were inevitable. Those changes, however, did not seem to be so far-reaching to the Norman king and his councillors as they do to us. The changes were more in emphasis and interpretation than in the character of institutions. The legal system, the law courts and the local government remained as before with slight modification.

Much of the Anglo-Saxon local institutions survived the Norman conquest. The greatest changes were effected in the central government, in the relation between the State and the Church and in the character of feudalism.

The royal power increased immensely as a result of the conquest. In the Anglo-Saxon age kingship was theoretically strong, but practically weak. There was no tradition of centralised monarchy in England. The local bodies were competent to transact many important functions. The Witan asserted its power and authority, whenever it found any sign of weakness in the king. The sovereign did not think that he had power to violate the customs and traditions of the country. Moreover,

for a long time the Anglo-Saxon monarchy was overshadowed by the increasing importance of the earls. All these were changed by the mere fact that the real title of William I to the throne of England was conquest. He retained a very large territory under his direct control, and therefore, became financially strong enough to subdue any insurrection of the barons and to impose his own will on them. The Norman kings had, by virtue of their double position as feudal overlords and national kings, much greater military power than any Anglo-Saxon king. William himself and his successors for a period of almost fifty years were rulers of vigorous character. The improvements they made in the government machinery and judicial and administrative systems made the influence of the central government felt in every corner of the country. The king evolved new methods of procedure, such as the use of jury for the ascertainment of facts, the issue of commissions of enquiry, the devising of new writs to suit new cases for redressing wrongs and supplementing the existing laws.

The greatest proof of the increased power of the king is to be found in the Domesday survey which was made in 1086. The result is embodied in the Domesday Book, which is so-called because no appeal could be made from its records. The inquiry was made throughout the kingdom to ascertain the taxable capacity of each estate of land. The sworn jury of each hundred had to declare before the royal commissioners the amount of land in each manor, the number of ploughs, the number and classes of persons living in it, the amount of forest and meadow, the number of pastures, mills and fish ponds etc. Thus the king secured information of the minutest details of the country he had recently conquered. The purpose behind the inquiry was to assess the Danegeld, which William determined to levy, though there was no danger of any invasion.

William the Conqueror had been all powerful in Normandy, and so when he transferred his system of government to England, he became all powerful there too. He became absolute

in power with little or no constitutional check upon him. "The machinery of the state," observes Adams, "above the merely local, was his machinery. The force which operated it was his will. The area of the state was his lordship



and domain, like the manor of a baron ; its revenues were his private income. Justice was his and he assumed for himself the right to enforce it upon all ; an offence against the law was an offence against him personally ; justices and courts were his instruments. Even the Great Council, the national assembly existed to do his business, not the nation's."

In the eye of the Norman lawyers, however, William I was merely the greatest of feudal lords. Like the other feudal lords he could hold a court of his tenants, levy an aid on those tenants, tallage their demesne lands, punish malefactors who broke their peace and pardon any violator of law according to his sweet will. If he could not be sued as a private person, it was merely because there was no lord over him who could call him to account. The king's court, the Norman Curia, had to be consulted in promulgating law, delivering judgment and levying new taxes. The joint authority of the king and the Curia were at the back of every act of state. Law, indeed, was thought to be immutable, but it could be modified by reforms through administrative edicts. Such edicts were passed by the king in and with the consent of the highest court of the realm which we now call the *curia regis* but which had no distinctive name in the eleventh century. Thus the king's council continued, in theory at least to exercise some checks on the arbitrary authority of the king. But the people had very little power to influence royal decisions. They could either petition the king for the redress of grievances or take up arms against him. The king was not bound to pay any heed to their petitions and had power enough to crush any rebellion.

The Anglo-Saxon national council was the Witenagemot, an assembly of the wisemen of the State. The Council developed into the Norman Council (popularly known as the Curia Regis), without any conscious design on the part of William the Conqueror. "William was not trying," observes White, "to change the Witan into a new kind of Council ; but as feudal tenure began to prevail, most of counsellors would be those who held from him in chief. He brought in continental feudalism because he knew no other and,

when he had done so and especially when his sons had elaborated and defined more sharply some of the feudal principles, any central council or court was bound to be largely a feudal court." But in the reign of William I some of the officials and members of the king's household attended on other grounds, though most of the officials were paid in manors and were as such feudal tenants. The Witenagemot was a sort of national assembly and its decision was binding on the king; but the vigorous Norman rulers were able to get the Council to do whatever they liked. The tenants-in-chief of the king could not possibly oppose the decision of their overlord. The formal sanction of the Council, however was necessary for legislation and taxation and this requirement kept alive the tradition of self-government in the period of strong royal authority.

William the Conqueror did not introduce much notable change in the local institutions of England. The name of the shire was changed into that of comitatus. Local Government but its functions remained almost the same. Ecclesiastical cases, however, were withdrawn from shire courts and were placed under the jurisdiction of the separate Church courts. Bishops no longer sat in the shire court. The earl disappeared from the shire court as the presiding officer. There were, indeed, Earls Palatine of Chester, Kent and Durham, but their functions resembled those of the viceroy or Justiciar. The Sheriff was appointed now from the rank of Barons and assumed the supreme position in local matters. The Sheriff was called the Vicecome, but he was not subordinate to the earl. He was immediately responsible to the king for the whole administration of the shire. The judicial work of the shire court continued to be transacted by the general body of suitors, who for the sake of convenience might appoint a small committee for delivering judgment. The Shire courts began to meet more frequently than before and the new procedure of calling an unusually large number of suitors to meet the itinerant justices at the shire court came into vogue. The Hundred Court was preserved, but owing to the substitution of manorial courts for township, its jurisdiction was curtailed. So far as the boroughs were concerned, they came to be regarded as in some lord's demesne. The population of towns declined from 17000 to 7000 only.

In the Anglo-Saxon age the Church was controlled by the State. But William I granted separate ecclesiastical courts to the Church. Thus two judicial systems were set up side by side. So long as the king remained powerful, it was possible to maintain the balance between the two systems. The Shire court used to make Church laws in the Anglo-Saxon age ; now this power was transferred to the Church Convocation. But no Common law could come into force without the previous sanction of the king.

The Norman conquest made profound changes in the social system of England. The old Anglo-Saxon aristocracy was replaced by the New Norman aristocracy. There was not even a single Anglo-Saxon amongst the six hundred greater tenants-in-chief of William the Conqueror. The cultivators in the township became the tenants of lords, in whose manorial courts they had to bring their suits.

## II. Growth of Feudalism

The most significant effect of the Norman conquest was the change in the character of feudalism from an economic to a politico-economic one. As a result of the change public duty became private obligation. The Norman rulers and lawyers conceived feudalism as a means of carrying on government.

William the Conqueror came from Normandy where Feudalism prevailed in its entirety. He quietly assumed the theory that the king was the supreme landowner, or that he held the kingdom from God. In the Anglo-Saxon age such a theory had not been evolved, though the English land system had been tending for a long time towards this theory. All the elements of feudalism were there. William turned them into a consistent whole and applied the theory which had been lacking. In this sense alone can William be said to have introduced feudalism in England. He confiscated a great part of land after the conquest. He granted some lands to his followers, restored some to the English landowners, and retained a large part as his royal domain. When he suppressed the subsequent revolts of the English, he took away their estates and granted these to the Norman barons. The Norman lawyers, acquainted only with

the feudal theory of tenure, treated all lands as held by feudal tenure. Thus all tenures including the Anglo-Saxon semi-feudal tenures were assimilated to strict feudal tenure until at last the king was recognised in the Domesday Book as the supreme land-owner.

The fief which was the foundation of the feudal relationship, was usually land, but might be any desirable thing, such as an office, a revenue in money or kind, the right to collect a toll or operate a mill. The fief was granted to a person by the king or overlord on condition of loyalty and services, the most important of which was military service. The king had to depend on the army supplied by his vassals. The barons had to attend the Norman Great Council as tenants of the king and dispense justice. The officers of the king were paid in manors just as the Mughal civil servants were paid in terms of *Mansabs*. Those who held fief directly from the king were called tenants-in-chief. They, in their turn, enfeoffed rear-vassals by the process of sub-infeudation. Each lord maintained his own baronial court, to which the tenants owed service and had to bring cases concerning their holdings and their relation to one another.

Political feudalism was based on three principles. First, obligations such as military service which are regarded as due to State were considered private obligations which one man owed to another in return of a fief. Secondly, the relations between the king and his subjects came to be based on contract, which could not be varied at the will of a single party. Thirdly, the actual occupier of the land was regarded as tenant and not as owner. These principles had far-reaching consequences on the development of constitutional system in England.

Some constitutional historians believe that William I made deliberate changes in the feudal system with a view to increasing the royal power. But modern researches have shown that "he did not consciously modify feudalism when he came into England or deliberately undertake to weaken his vassals. But he was as strict and stern a king in England as he had been duke in Normandy ; he was great enough to play the same part on the larger stage" (White). He required, indeed, an oath in the gemot of Salisbury in 1086 from all holders of land in

England to the effect that they would owe allegiance to the king in the first instance and then to their immediate lord. But such an oath was exacted even in Normandy. "It was Norman practice" says Adams, "coming down from the earlier Frankish state that each rear vassal in swearing allegiance to his lord served his allegiance to the king, and the king occasionally took from all holders of land a direct oath of fidelity to himself." Such an oath deterred individual barons from rising up in rebellion.

William did not grant lordship over a large number of contiguous manors to any baron. But this was really due to circumstances under which England came to be conquered. The country was conquered piece-meal—first of all south-east England was conquered, then south-west; then came the series of rising in the north and lastly, Chester and the Welsh border were granted to his clamorous followers, who at the end came to possess manors in different parts of the country. Sometimes the holdings of a rebellious Saxon lord was granted in toto to a Norman baron, but as the lands of the former were irregular and scattered, the latter, too, came to possess scattered holdings.

But the Conqueror was strong enough to keep his unruly barons in check. He retained a large part of the country as the royal domain and as such was the wealthiest person in the State. Moreover, he received substantial military service from the Knights' fees held directly of the Crown. He maintained in fact the *fyrð* or national militia of the Anglo-Saxons and could use it against the barons, if such an occasion arose. William instructed the sheriffs to hold pleas involving royal interests even within the buildings of great lords. This practice increased his own income and lessened the judicial income of the vassal. The king, again, did not allow his barons to exercise the rights of private warfare. These restrictions and interferences goaded the barons to an insurrection in 1075, but it was suppressed. The Norman rulers did not allow the barons to become independent either judicially or administratively. No baron had right to maintain his castle against the king; nor was he absolved from his own responsibility to the justice of the king.

### III. Policy of William the Conqueror

The claims and pretexts of William the Conqueror to the throne of England were many—the promise of Edward the

Confessor, the oath of Harold, and the championship of the Church. He advanced a further claim on behalf of his wife Matilda, descended from the old Anglo-Saxon line of

kings. His real claim was the right of conquest, but from legal point of view his claim was based on his election to the throne by the Witenagemot. Soon after the battle of senlac he was crowned according to English custom, and thus came into possession of the usual powers of the English kings. He also enjoyed some advantages from the fact that he was a conqueror. A large portion of the English lords championed the cause of Harold and took part in rebellions which arose against William in the early years of his reign. So William confiscated their estates and conferring these on his Norman followers strengthened his military power.

The policy of William the Conqueror in England was to strengthen the monarchy, which had been generally weak in the Anglo-Saxon period. He conquered but a small part of

Position as  
national king  
and feudal  
suzerain

England in the battle of Hastings, but the English Witan, out of fear elected him and the archbishop crowned him King at Westminster. This position as the national king of England, he utilised to check the barons.

He punished the English lords, who subsequently rose in revolt against him, by confiscating their lands. He thus became master of most of the lands of England and under influence of continental feudalism introduced the theory that all lands ultimately belong to the king. Thus he became at once the national King of England and the feudal overlord of his tenants-in-chief. This double position made him the most powerful ruler of the time.

Though William adopted feudalism as a theory of land tenure, yet he had sufficient experience of continental feudalism to warrant him not to adopt feudalism as a system of government. On the Continent, the monarch was weak and the feudal barons held almost an independent position by virtue of the exclusive allegiance of vassals to their immediate lord, and

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owing to the possession of extensive lands, concentrated in one locality. William wanted to avert both these sources of danger. He kept in his direct possession a great part of the lands and thus became the greatest landlord of England. He became as stern an overlord in England as he had been in Normandy. The Norman type of feudalism which was transferred to England made it difficult for the baron, whatever the size of his barony, to make it anything like an independent state. The feudal barons could not easily collect army to rise up in rebellion against the king. William checked the barons by breaking into the most essential attribute of continental feudalism—the exclusive dependence of vassal upon his lord. The sub-tenants of a lord, could not take up arms, at the bidding of his lord, against the king. He maintained the old local courts of the Shire and Hundred to curtail the jurisdiction of the baronial courts. He retained the Anglo-Saxon fyrd or national levy. In the Shire Court, where every free-holder had to attend, the tenant-in-chief met his own vassal on a footing of legal equality. In general, it was William's aim to keep the administration in the hands of sheriffs, and to reduce the earls to a mere titular position. By retaining the local moots and also by keeping up the national militia, he held a strong counterpoise to baronial rule and the feudal army.

William I carried on the Government with the help of his great officers. He was so very absolute in the state that he could say like Louis XIV that he was the State. But he used to call some of his tenants-in-chief to his Great Council with whose consent he enacted new laws and sometimes imposed new taxes. He thus maintained the form of constitutional government, though not its spirit.

William I had received the blessings of the Pope in his conquest of England and he wanted to show his gratefulness to the Pope and to keep the Church as an ally by his side. He made the Church at once less independent and more independent. In the Anglo-Saxon days the Church had enjoyed an insular and barbaric independence. William brought the English Church into closer contact with Rome. But he had no intention of placing the Church under the control of the Pope or of making it really independent.

He brought the Church under a stricter control of the general government than it had been subject to before. He improved the morals of the clergy and advanced the cause of learning in the Church. Church Councils were revived, marriage of clergies was forbidden and the monasteries were reformed. He curtailed the power of the clergy by four measures :—(1) He did not allow them to receive letters from the Pope without his approval. (2) He did not allow the Convocation to enact new laws for the Church without his consent. (3) He did not permit the bishops to ex-communicate his servants or tenants-in-chief without his command. (4) He did not allow any legate of the Pope to enter England without his license, nor to recognise the Pope without his consent. William imposed, as far as possible feudal burdens on the lands of the Church.

But in order to please the Pope, he granted to the Church of England a separate ecclesiastical court to try spiritual cases according to the canon law. Spiritual cases were no longer to be tried in the Hundred Court, but were to be heard in the courts of Bishops and Archdeacons. Thus two systems of law and two sets of courts were established. The independent Church court became a rival of the king's courts later on.

#### IV. Relation between the Church and State in the Norman period

The English Church was given a definite position and organised as a power apart from the State by William I. We have already discussed in detail the relation between William I and the Church. So long as he lived, he was able to maintain peace between the Church and the State. But his son and successor William II often kept sees and abbeys vacant in order to enjoy the revenue. The see of Canterbury was kept vacant from 1089 to 1093, and when Anselm, the newly appointed Archbishop, protested against such abuses, he was banished by William II.

The first act of Henry I was to call back Anselm from exile and to issue a Charter of Liberties, in which he promised not to sell, let, farm or take anything of the Church, when a see would be vacant. During his reign occurred the famous in-

vestiture contest, which ended in a compromise in England. The bishop was usually chosen by the king, though a form of election by the canons of the cathedral was kept. The bishop was a tenant-in-chief of the king and as such did homage to him and received the ring and crozier, the symbols of spiritual authority from him. But now Anselm claimed that the bishop should receive investiture from the Pope and that the king should not interfere in the matter. But the king maintained his claim firmly. At last, a compromise was arrived at, by which the king was to receive homage from the bishop as his feudal overlord, but the ring and crozier were to be invested by the Archbishop. Henry later on, acknowledged the right of the Pope to hear appeals in ecclesiastical cases from the Church Courts of England.

Stephen being desirous of securing the help of the Church granted it the jurisdiction over ecclesiastical persons and their property in all kinds of cases. Thus a large number of persons, whatever crime they might commit, became free from the control of the State. Now the Church became really the rival of the State. The evil consequences of William's Church policy became manifest in the reign of Stephen and in the contest between Henry II and Becket.

### V. Relation between the king and the Feudal nobles

The Norman Kings, except Stephen, were all men of strong character and were able to keep the barons under control. The power of the feudal nobility was a source of danger to peace and safety of the common people as well as a menace to good government. We have already seen how William I had avoided the dangers, which threatened good government on the continent.

If William I was a despot, his son William II was a tyrant. His justiciar, Ranulf Flambard, organised relief, wardship and marriage as methods of arbitrary taxation.

Flambard used to seize for the king all the profits of the estate of a minor heir or heiress and scrupulously collected the fines or payments due from them on their coming into estates.

These exactions drove the barons to rebellion in 1088. But William secured the help of the English by promising them liberty and subdued the barons. He then increased his power by confiscating the property of the rebels.

Henry I, on his accession, conciliated the nobles by issuing a Charter of Liberties in which he promised to his tenants-in-chief to remit all illegal exactions of the previous reign. The most important clause of the Charter is the declaration of Henry that "If any of my earls, barons or other tenants shall die, his heir shall not redeem (buy back his land), but shall relieve it (take up the inheritance) by a just and lawful relief". This clause is significant because fiefs are declared to be hereditary by it. The Charter of Henry I marks the first check on the despotism founded by the Conqueror and carried to such a height by William II. It was renewed by Stephen and Henry II and formed the basis of the Magna Carta.

Henry I created a new official nobility and strengthened the courts of the Shire and Hundred against the manorial courts. Thus he followed the anti-feudal policy of William I.

During the anarchy of Stephen's reign the barons made themselves practically independent. His reign was but a war of succession, waged by him, against Matilda, the daughter of Henry I. Stephen and Matilda raised rival armies by giving a free hand to their baronial supporters and by granting away to private persons those rights of the Crown which the Norman kings had laboriously acquired. The sheriff had been a real officer of the king in the shire during the reigns of the first three Norman kings. But Stephen and Matilda granted to powerful barons and their heirs the right of holding the king's judicial and administrative power in the country. "The land was all undone with their (barons') misdeeds; and men said that Christ and his saints slept." The anarchy of Stephen's reign showed the necessity of a strong monarchy. We shall show in the next chapter how Henry II took wise steps to curb the power of the barons; how the latter regained their power during the reigns of John and Henry II and how Edward I struck a deadly blow against the independent power of the feudal nobility.

## VI. Contributions of Henry I to the development of the English constitution

The reign of Henry I (1100-1135) is marked by the recognition of the system of old laws of England, and the evolution of new legal procedure and administrative institutions. All classes of people had been harassed by the tyrannical rule and financial exactions of William Rufus, the brother and predecessor of Henry I. Henry found that the barons were turbulent and powerful and his claim to the throne was weaker than that of his elder brother Robert. He, therefore, tried to secure the goodwill of the barons, the Church and the city of London by granting the Charter of Liberties. In the very first paragraph of the Charter he admitted that "the kingdom had been oppressed by unjust exactions", and he promised that he would remove "all evil customs by which the kingdom of England was unjustly oppressed." This is an acknowledgement, for the first time by the new line of rulers, that there are certain things which the king cannot legally do. The importance of such an admission cannot be over-estimated for the future development of the English constitution. It was on the basis of this Charter that the barons in the reign of John claimed a restoration of the ancient liberties of the nation.

The Charter of Liberties gives a clear example of the contractual relationship between the king and the barons. It is concerned mainly with the feudal dues. But the king promised to the nation at large that he would preserve the laws of Edward the Confessor with the amendments made by the Conqueror with the consent of his barons and that he would impose fines, not according to his own will, as had been done at the time of his father and brother, but according to the nature of the offence, as in the Anglo-Saxon age. The claims of the people were also recognised in the proclamation of the King's Peace, and especially, at the express extension to all under-tenants of the benefits granted to king's immediate vassals.

The chief importance of the reign of Henry I lies in the development of law and institutions. Great interest was evinced in the study of law. As many as seven compilations, more or less complete, of English law then current were made during the last twenty-five years of the reign of Henry I. It has been surmised that possibly the promise of the king to

Importance of  
the Charter of  
Liberties

Law

restore the laws of Edward the Confessor gave an impetus to the collection of the old laws of England. These compilations possibly show the laws, the Anglo-Saxons had, and also depict the mixture of Saxon and Norman laws which was taking place in this period.

The sources of legislative and administrative reforms of Henry I are somewhat obscure, but from what can be legitimately inferred from these, we learn that Judicial system "all the great advances in the principles, institution and organisation of civil justice, which characterise the reign of Henry II, had their beginning in the time of his grand-father." In the fields of law and justice. Henry I began to use three things namely, the writ, the jury and the itinerant justices, all of which became increasingly important in later times. The Writ, possibly of Frankish origin, was a mandate of the king directed either to a private individual like a baron or a government officer like the sheriff ordering him to perform some specified acts. The king developed new judicial process and got many kinds of cases transferred to the royal or shire court. The Jury was used for different purposes in the reign of William I and Henry I. A fuller account of this institution will be given later on. Henry I grouped a number of counties into circuits and sent a body of justices to each circuit to try certain cases. The king's justices decided these cases in the special sessions of the shire courts. They linked up the central government with the local organisation and "carried the king's court down into the locality and did a branch business there." Henry I protected the local courts against irregular use by local officers and restored the older rules regarding their times and places of meeting.

The idea of King's Peace was extended in the reign of Henry I. Assault, robbery, homicide, contempts of the King's writs came to be regarded as breaches of the peace of the king. This extension implied the growth of royal or national justice at the expense of local justice. The offenders for the breach of king's peace were at the king's mercy and the king could take his life and property as he thought fit.



In the field of administration we find that Roger of Salisbury, the Justiciar of Henry I, developed the organisation and especially the methods of accounting of the Exchequer. The Exchequer tried legal cases concerning finance, supervised the collection of the king's revenues and drew up accounts of receipts and expenditure. It began to be separated from the undifferentiated general body of the king's court in the reign of Henry I.

Administrative  
reforms

## VII. The Norman Administration

The Norman kings were great administrators, but not great legislators. They did not like to appear in the rôle of innovators. They always professed to be carrying out the old laws of the Anglo-Saxon times. We find, indeed, compilations known as *Leges* William I or *Leges* Henry I, but none of them was earlier than the 12th century. Moreover, they contained very little that was not to be found in the old English custom. William I declared, "This I will and order, that all shall have and hold the law of King Edward as to lands and all other things with these additions which I have established for the good of the English people." Similarly, did Henry I proclaim in the Charter of Liberties, "I give you back King Edward's law with those improvements whereby my father improved it by the counsel of his barons." The Norman kings assimilated and adapted to their purpose what they found in the Anglo-Saxon age without taking recourse to any revolutionary legislation.

Paucity of new  
laws

The king was the head of the administration. He could do anything he pleased, provided he did not offend against tradition and acted with the advice of his great men who in the Norman period, being the tenants-in-chief of the king could not dare to offend him by refusing to sanction a course of action on which they found the king to have been bent upon. The king was not only the ultimate lord of all the land but also the guardian of the welfare of the people. The Norman kings, by virtue of their industry, ability and statesmanship raised the powers of the king. Not only did the administration derive its motive power from the will of the king, but also justice appeared increasingly to have sprung from the king. William I and his sons kept the barons

The King

in check but the latter gained some power during the weak rule of Stephen. The Norman and the Angevin kings used to make frequent tour throughout the country.

The Curia or court of the king was variously known as the Curia Regis or Curia domini regis ; sometimes it was called the Concilium or Council and Magnum Concilium or the Great Council. These words were often vaguely and indiscriminately used, so that it is difficult to ascertain what was exactly the composition and function of the different sorts of the king's court. The court was called upon to discharge legislative, executive, administrative, financial and judicial business ; and there was no sharp differentiation between these functions. When, however, there was the rare occasion of imposing a tax on the barons, all the tenants-in-chief were formally invited. The king's court seems to have been composed of two elements—the permanent members of the king's household and the personal retenues on the one hand and the tenant-in-chief, lay and ecclesiastical on the other. The chief household officers were the following :—(1) the Chamberlain who originally looked after the valuables the king had with him, (2) the Steward, who was the chief of the household officers ; (3) the Constable and Marshal who were in charge of military arrangements ; (4) the Justiciar, who supervised the judicial work of the court, performed general administrative duties and acted as the viceroy during the frequent absence of the king from England ; (5) the Chancellor who worked as the chief secretary, despatched letters, looked after the great seal and dealt with the granting of Charters ; (6) the Treasurer who received money and paid it out on the orders of the Justiciar and Chancellor and discharged multifarious administrative functions. These officers were almost always present in the Curia Regis and the Great Council. It seems that as administration grew more and more complex a small council emerged out of the Great Council. The small Council, however, was merely the Great Council reduced in size. Roughly speaking, the small Council consisted of the household officers of the king and such barons as happened to be present. The barons were bound to attend the king's court and render political service according to the feudal tenure. All the tenants-in-chief were liable to be called to the king's court, but their number was so large, that only those who were in the neighbourhood of the place through which the king happened to be

passing, were actually invited. The king's court, whether composed of a few household officers or of the large number of tenants-in-chief, was the final authority over any matter brought before it. The Exchequer came to be differentiated from the king's court in the reign of Henry I.

The king was expected to live of his own. There was no distinction between public revenue and personal income.

Finance                      Taxation was resorted to only on extremely rare occasions, as for example, the Denegeld or Saladin Tithe. The chief sources of income of the king were the royal lands, feudal dues and incidents like aids, relief, wardship, marriage, fines and escheat ; the selling of royal privileges, the income from royal justice and treasure troves.

Justice was administered in four different categories of courts, namely, the royal court, the church court, the baronial court and the communal court of the shire and hundred. The kings were bent upon Administration of justice                      drawing the largest number of cases to their own courts, because greater the number of cases the larger the revenue and because it was a convenient means of checking the power of the barons. The people, too, liked to have their cases decided by the king's court, because the judges happened to be more trained, efficient and impartial, and because their decisions were more promptly carried out. The Curia Regis or the king's court was primarily meant for the trial of the tenants-in-chief of the king and for the cases in which the personal interests of the king were involved. But the king could grant special permission to private individuals to get their cases tried by the Curia Regis. It must be noted, however, that the Curia Regis was not a court of appeal, because the legal theory in those days was that a case once decided could not be decided again. Henry I's system of sending out royal judges in circuit has already been explained.

## CHAPTER III

### THE PLANTAGENET PERIOD 1154-1399 A. D.

Henry I	1154-1189	Edward I	1272-1307
Richard I	1188-1199	Edward II	1307-1327
John	1199-1216	Edward III	1327-1377
Henry III	1216-1272	Richard II	1377-1399

#### I. The centralising policy of Henry II

Henry II was as much a foreign ruler as William I, but from the very beginning of his reign, he behaved like a national king of England. He tried to promote the well-being of the masses by securing for them the benefits of a well-organised administrative system under which all classes of people received equal justice at the hands of the king. His aim was to reduce all men to equality before the eye of law. This he could achieve only by consolidating and centralising all power in his own hands. The powers of the Church and of the feudal baronage stood as iron bars against his authority, and he had to curb these powers with hand.

There was a total breakdown of the administrative machinery during the nineteen years of Stephen's rule. The baronial and the ecclesiastical courts had gained much power at the expense of the royal courts. The Church and baronage claimed to decide all kinds of cases. The army was disorganized and ill-disciplined, Stephen had quarrelled with his high officials and imprisoned the Justiciar, the Chancellor and the Treasurer. The Great Council had not met during the last fifteen years of Stephen's reign. The Sheriffs, recruited from the baronial class, had usurped much power and the countryside groaned heavily under their tyranny. The immediate task before Henry II was to reorganise the administrative system and repair the damages done to national life during the period of anarchy.

Henry II confiscated all the crown lands which had been granted by Stephen and Matilda to secure the support of the

barons. All the castles built by the barons without royal permission during the anarchy were pulled down. The new earldoms were destroyed, the foreign mercenaries were banished and the coinage was reformed. In order to check the military power of the barons, Henry restored the Scutage, which had been introduced by Henry I. The Scutage or shield money was a payment made by the feudal tenant in lieu of military service which he owed. Henry II retained the right of claiming military service, whenever he liked. The introduction of the Scutage had important consequences. The barons gradually lost their military habit and the king could engage mercenary soldiers with the money. This army the king could use even against the barons. Moreover, the feudal army was bound to serve the king for forty days only in the year ; but the king could retain the services of the mercenary soldiers as long as he was able to pay them.

Henry II further curbed the power of the barons by the Assize of Arms of 1181, which placed in the hands of the justices the duty of superintending the armaments of the local fyrd. All freemen (not villains) were to possess arms of a quality differing according to their wealth and they must keep themselves ready for the king's service in time of need. Thus did Henry II reorganise the Fyrd or national militia, and kept it as a counterpoise to the military power of the feudal barons. Henry enforced, by the Assize of Clarendon, the presence of all freemen, including the nobles, who had independent courts, in the country court on the occasion of the visit of the royal judges. The people in the country side, thus got the idea that the king's justice overrode all special franchises or privileges. It has been rightly said that the system of itinerant justices dealt the death-blow to feudalism.

Partly by Writs and partly by Assizes, Henry II carried new legal remedies, new modes of litigation and new forms of action to draw out cases from the feudal courts to the king's courts. He took under the royal protection the small owners whose estates were coveted by the feudal lords. Henry allowed the plaintiff in a suit concerning land to apply to the king for a *writ of right*. The king addressed the writ to the lord ordering him to do justice within a given time. If the lord failed to do so, the case was taken by the sheriff into the shire court. A more drastic method was the Writ Praeipe, which



assumed the plaintiff to be in the right and ordered the lord to make restitution. If the lord wished to contest the order, he had to appear before the king's Judges, who regarded the case as a contempt of the king's Writ. The tenants were also protected against ejectment (*novel disseisin*), and in their succession to the property of their ancestors (*mort d'ancestor*). These processes will be explained more fully in connection with the Judicial reforms of Henry II. It should be noted here that in his efforts to promote centralization, Henry II overrode the well-defined rights of the barons and especially infringed their property rights.

Henry II also checked the power of the baronage indirectly by the Inquest of Sheriffs in 1170. The itinerant justices were commissioned to make an enquiry into the conduct of Sheriffs, because there were many complaints against them. Henry dismissed those local magnates who were accused of corruption and appointed new ones in their place. He took care to select these men from the rank of common people, because they could be controlled more easily than the barons. He also enlarged the duties of sheriffs, empowering them to enter private jurisdictions of the barons in pursuit of criminals.

## II. Judicial reforms

Henry II effected great improvement in the judicial and administrative system of England. His zeal for justice sprang from financial and anti-feudal motives. The more justice he could draw from the feudal courts to his own, the greater the revenue he could divert from his unruly barons into the royal exchequer. "From his time onwards," says Maitland, "the importance of the local tribunals began to wane; the king's own court became ever more and more a court of first instance for all men and all causes." The *Curia Regis* was very popular on account of the employment of trained personnel and its administration of impartial justice. The *Curia Regis* became so very popular, that it became impossible to try all cases there. In 1178 he appointed five members of the royal household to hear pleas and not to leave the king's court, that is not to travel through the country with the king. This institution is taken by some historians to be the origin of the Court of Common Pleas, but this is not admitted by others. The Assizes of Clarendon (1166) and of Northampton (1176) brought all serious crimes

Judicial  
machinery



under the jurisdiction of the king's judges. These judges, however, still travelled round with the king. The sharp differentiation of the various offshoots of the Curia Regis, namely, the Exchequer of Pleas to try financial cases, the Court of Common Pleas to try cases in which the interest of the king was not directly affected, and the Court of King's Bench to try the cases in which the king was interested and all criminal cases, did not take place before the reign of Edward I. In 1194 Henry appointed officials called Coroners to look after "pleas of the crown." The most important judicial machinery used by Henry II to bring about effective centralisation was the Itinerant Justices, first introduced by Henry I but fallen into disuse during the anarchy of Stephen's reign.

The reforms of Henry II brought more and more cases to the king's court. Business was divided between central and local courts according to convenience. Some members of the king's court went out on tour regularly to bring the benefits of the king's justice to his subjects in all parts of the kingdom. These Itinerant Justices decided the civil cases arising out of the possessory assizes as well as the criminal cases. But the duties of the Itinerant Justices were not entirely judicial. They had to collect the king's dues, levy tallage and assess revenue. They were also required to maintain peace and order in the locality, to keep the central government in touch with local affairs, to supervise the work of the sheriff, to hear complaints against government officials and to visit jails.

The principle of the Jury system seems to have been borrowed by the Norman kings from the law of the Frankish kings. During the reign of William I royal officials were sent down to collect information from bodies of local inhabitants sworn to tell what they believed was the truth. By this process the famous enquiry of the Domesday Book was carried out. Henry I used this method to gather other kinds of information. Henry II used the Jury system as a form of trial. In those days there were three methods of trial, namely, Ordeal, Compurgation and the Trial by battle, introduced by the Normans. Henry II with his keen sense of justice found all these methods defective. He allowed the public to use the Jury trial, provided they got the king's permission. On payment of fees the permission was given in a writ, describing the case and giving

the Justice authority to try it. The Jury of this period is quite distinct from the present Jury, in as much as the former was called to swear to a fact which they knew, while the modern Jury is supposed to have no personal knowledge of the fact.

The Jury was used in civil cases arising out of dispute over the possession of the land. The writ of *Novel disseisin* enabled a tenant who had been recently dispossessed of his land to bring his claim before a sworn Jury and to obtain judgment from the king's court. The Writ of *Mort d'ancestor* protected heirs on the death of the ancestor whom they hoped to succeed. The Grand Assize allowed a man accused of usurping a piece of land which belonged to someone else the right to prove his claim either by battle or by the use of a jury of recognition. The Jury were to take an oath to testify their knowledge before the king's judges as to which of the parties had the better right.

In criminal cases the Jury of Presentment was introduced by the Assize of Clarendon (1166). Such a jury did not formally judge the question of fact as to the circumstances of the crime ; it merely made formal accusation. After such an accusation the justices sent the suspects to the Ordeal by Water ; and even if they passed the ordeal they were outlawed. So the practical effect of the accusation by the Jury was to condemn them. Every Hundred had to send before the Itinerant Justices a picked Jury of 12 lawful men obliged to indict suspected criminals. The Jury were punished in case of their failure to present suspected persons. The Jury system succeeded in making the judicial administration more efficient and in course of time it gave rise to the parliamentary system of representation.

The ordinances by which Henry II accomplished the legal and administrative reforms are known as Assizes. The term

Assize is derived from the Latin *Sedeo*, which means a sitting or session. At first, the word seems to have been used in England to denote a sitting or session of the king and the barons. Later on it came to mean an ordinance made at such a session. The term could also be used to mean a mode of trial, or to the select body who carried it, or to the trial itself. When it is used in the phrase assize of novel disseisin or assize of mort d'ancestor, it may refer to the ordinance which instituted the new procedure or to the procedure itself.

The Assize of Clarendon in 1166 reissued with amendments at Northampton in 1176 introduced the germs of trial by Jury and developed the criminal procedure and the Itinerant Justice system. The Assize of Arms (1181) was based on the principle that every freeman might be called to serve the state in war. The Assize of Woodstock (1184) defined for the first time the king's rights in his forests. Two great law books, one called *Dialogue de Scaccario*, written by Richard Fitz Neal, Bishop of London and Treasurer of the Exchequer, and another, a Treatise on the Laws of England, attributed to Ranulf Glanvill, the Chief Justiciar, give an accurate picture of the working of the Exchequer and of the royal court respectively.

In carrying out his legal and administrative reforms, Henry II developed a set of institutions which not only gave him the ascendancy he desired, but were so well organised throughout the country that they served as the political framework of national unity. In certain matters at least they brought the royal government directly home to the most remote subject and made him render obedience to a king and to a law common to all England. It is in the new system of recognition, assizes and presentment by Jury that we find distinct traces of the growth of the principle of representation. The Jurors swore to a fact in the capacity of representatives of the community. The immediate effect of the reforms of Henry II was to make the monarchy so powerful as to allow his son, John to exercise tyrannical authority. "More than any other single man," writes Ramsay Muir, "Henry II, despot as he was, was the creator of the Reign of Law in England; and the Reign of Law is the only possible foundation upon which what we call political liberty can safely arise. It is not until men have learnt to obey and know the law as a matter of habit, that they can usefully begin to co-operate in making and controlling laws. And, therefore, the despotism of Henry II, like the despotism of the Normans who preceded him, was a necessary and invaluable stage in the education of the English people for self-government." Henry II transformed the practical absolutism of the Norman kings into constitutional forms, expressing themselves in law and institutions. He incorporated in the habitual machinery of the central government the institutions of King's Justices, circuit courts, writs and Juries, which the Normans brought with them to England.

In this sense his work may be described as more restorative than innovative in character.

## II. Henry II's Relation with the Church

Henry II wanted to organise a national and uniform system of law and justice. Two obstacles stood in his way—(1) the baronial courts and (2) the church courts. He was able to curb the power of the baronial courts. But he was confronted by the obstacle of the larger jurisdiction of the church courts which had gained much in power since the time of William the Conqueror. The breakdown of the secular machinery of government under Stephen threw more business into the hands of the church courts. At the beginning of the reign of Henry II, the Church Courts received a revenue in fines larger than the revenue of the crown. The Church Court was more popular than the royal courts as it did not inflict harsh punishments.

The jurisdiction of the Church Courts included the following cases ;—(a) Offences against religion and morals such as heresy, blasphemy, adultery and slander. (b) Offences against the duties of the clerical order, committed by clergymen. (c) All kinds of criminal offences committed by clergymen. The king appointed his favourite chancellor, Thomas Becket as Archbishop of Canterbury, in order to bring the Church under the control of the state. But as soon as Thomas Becket accepted the Archbishopric, he became a staunch supporter of the privileges of the Church. In 1163 a cleric committed a particularly atrocious murder, but he was ordered by the Church Court to abstain from the Sacrament for two years only. The Church Court could not inflict capital punishment. Henry II became very angry at this gross failure of justice and required that the clergy should obey the "customs of the realm." A commission was appointed to draw these customs and it produced the Constitution of Clarendon.

The main provisions of the Constitutions of Clarendon are :—(1) Clergymen accused of crime must, in the first instance, appear before the king's justices ;

Provisions of the  
Constitutions of  
Clarendon  
(1164)

cases which fall within the jurisdiction of the church courts should be sent thither for trial. If they were found guilty, they were to be degraded from their orders and would then be

handed over to the King's Court for punishment. Thus Henry II did not claim to sentence a clergy, but only claimed to punish the degraded clerks. Disputes about ecclesiastical posts and pleas of debt were to be decided in the King's Court. (2) A tenant-in-chief should not be punished by the Church without the permission of the king. (3) Prelates and clergy holding lands from the king must bear the same feudal burdens as the lay tenants-in-chief. They were to be elected according to the king's writ and must do homage to the king before consecration. (4) Appeals from the church courts must be made to the King's Court and not to be carried to Rome without the King's consent. (5) Sons of villeins were not to be ordained as priests without the consent of their lords.

Henry II did not make exorbitant claims on the church. He only wished to bring all criminals, whether lay or clerical under the ordinary law. In other respects he was only trying to enforce the laws of William I and Henry I. The church courts claimed to try not only cases where a cleric was the complainant but also cases where a cleric was the defendant. The immunity of the clergy was claimed by all the professional classes except soldiers and lawyers. Hence Henry II was justified in claiming some jurisdiction over the so-called clergies.

But Becket withdrew his consent from the Constitutions of Clarendon and was compelled to flee from England. In 1170 Becket returned to England and ex-communicated the Archbishop of York and the Bishop of London for crowning the King's eldest son as the Prince of Wales. The King expressed a desire of getting rid of Becket. Some followers of the King murdered Becket.

As soon as Becket died, he was worshipped as a martyr to the cause of the Church. The king lost much of his ground. "Nevertheless in the main he was successful" ; says Maitland, "by the action of the royal court which now becomes steady and vigorous a line was drawn between the temporal and the spiritual spheres, though it was not exactly the line which Henry tried to define, though for a century and more after his death there was still a debatable border land."

### III. The Magna Charta

The absolutism of the Anglo-Norman kings, strengthened greatly by the centralizing policy of Henry II, reached its



climax in the reign of John. John hired mercenaries and with their support not only taxed and fined his subjects of every degree, but also performed gross acts of cruelty. His conflict with Philip Augustus, the French King and Innocent III, the Pope, cut short the period of his tyranny.

The French King took away almost all the French provinces belonging to John. Thus John was thrown entirely upon the goodwill of his English subjects. The Barons too, being confined to England only, could now devote their whole attention to the attainment of good government of England.

John also quarrelled with Innocent III, the most powerful Pope of the middle ages, over the election of the Archbishop of Canterbury. The monks of Canterbury elected an Archbishop and John elected another. Both of them appealed to Innocent III, who nominated a third man, Stephen Langton for the post. But John refused to allow Stephen Langton to land in England. The Pope at first interdicted and then excommunicated John. But John did not yield till a French army was on the point of invading England with the sanction of the Pope. John then humiliated himself by becoming a vassal of the Pope. The people were alienated from him by this step.

But John gained the alliance of the Pope and tried to recover his French possessions. But the English barons objected to go to France by maintaining that the feudal obligations did not compel them to go out of England. John wanted to punish the barons but was checked by Stephen Langton, who reminded him that he could not punish any baron without sentences of his court. John was defeated by the French King. Meanwhile the Baronial party was strengthened by the adhesion of the townsmen. They met under the leadership of Stephen Langton in St. Paul's London, and demanded that John should grant a Charter, similar to that of Henry I. The barons again met at St. Albans in 1214, during the absence of John in France • and resolved to present their demands to John after Christmas.

Coming back to England, John called mercenaries from foreign land and implored the help of the Pope to crush the barons. But the barons were too strong for him. Even his own friends deserted him. So he reluctantly signed the great Charter at Runnimeade on June 15th, 1215.

### Chief provisions of Magna Charta

The great Charter consists of 63 articles, which may be conveniently divided into six groups.



John had previously granted a Charter to the Church, in order to gain its support. In the Magna Charta, he confirmed that Charter by declaring that the Church should be free, with all her liberties and rights inviolate.

The Magna Charta defined the various feudal obligations due to the king in 24 clauses in order to check his extortions.

(a) The *Relief* was limited to 100 pounds in the case of succession of a baron and to 100 s. in the case of succession of a knight.

(b) The king must not take more than the customary due as *wardship* and must not waste the property of the minor. (c) If the king chose a husband or wife for the heir he must select a person of suitable rank ; he must not compel a widow to remarry. (d) The king was not to empower the mesne lords to exact more than 3 customary aids of reasonable amount. (e) The king must not hold the land of a convicted felon for more than a year and a day. (f) The king was to take the same relief and services from the tenants of baronies, escheated to the crown as if the land were still held of a mesne lord. (g) The king was to call the tenants-in-chief only for the regular services. By clause 60 all the foregoing rights and liberties granted to the king's vassals were extended to the whole nation.

(1) The third group dealt with judicial matters. By clause 16 the *Court of Common Pleas* was to be held in a fixed place i.e., at Westminster. (2) Clauses 18 and 19 regulated the Assizes of the Itinerant justices, which were to be held four times a year. (3) The sheriff, constable, coroner or bailiff of the king were *prohibited* to help pleas of the crown. (4) No freeman was to be punished without *proper trial*, as the clause 39 declared—"No freeman shall be taken, or outlawed, or exiled, or in any way attacked, nor will we go against him ; nor send against him, unless by lawful judgment of his peers or by the law of the land". (5) Fines also were to be proportionate to the crime ; (6) The means of subsistence should not be taken from any man as fine. (7) The king promised not to make justice a source of profit. "To no man will we sell, no man will we deny or delay, right or justice" (40) ; (8) persons well-versed in law were to be appointed as judges. *Clause No. 34* declared :—"the writ called *praecipe* shall not be issued in

Law and  
Justice

future so as to cause a freeman to lose his court." By this clause the jurisdiction of the baronial courts was protected.

*Clause 12* provided that no scutage or aid, excepting the three regular feudal aid should be imposed, save by the "common council of the realm." *Clause 14* laid down that this common council was to consist of an assembly to which archbishops, bishops, earls and greater barons were to be summoned each by a separate writ directed to the sheriff of the country.

The City of London and all other cities, boroughs, towns and ports were to have their liberties and free customs. Foreign merchants would have the liberty of entering or leaving England freely, except in time of war. One standard of weights and measures was established throughout the kingdom.

The severity of forest laws was mitigated. Purveyances and other royal exactions were regulated. *Clause 61* provided the mode of enforcing the Charter. The barons were to elect a council of 25 conservators, who on any violation of the Charter by the king, were to demand redress. If no redress be given within 40 days, the said 25 barons with the commonality of the whole land were to enforce their claim by distraint and distress on the royal lands and possessions, that is, by making war. Such an arrangement was typically feudal, but entirely unsatisfactory.

### Subsequent history of the Charter

As soon as John granted the great Charter, he looked for means of evading it. He got the Pope to say that he was not bound to maintain the Charter as it had been forced from him. John collected mercenaries to fight with the barons. The barons invited Louis of France to England. Louis landed in England but in the midst of the fight John died in 1216. His minor son Henry III was crowned and Louis retired. The Charter was reissued in 1216, but from it the constitutional clauses 12 and 14 were omitted. In 1217 it was again reissued with some modifications and in 1225 another issue of it was made. The edition of 1225 was widely known and was generally used for constitutional purposes. Though the so-called constitutional clauses, numbers 12 and 14 were omitted, yet in actual practice

the later kings observed the terms of these clauses. Henry III again confirmed the Charter in 1237. Edward I confirmed it in 1297 by the famous *Confirmatio Cartarum*. It was repeatedly confirmed down to the time of Henry IV. Sir Edward Coke in the reign of James I reckoned 32 confirmations of the Charter.

### Form and Character of the Magna Charta

Taswell-Langmead describes the form of the Magna Charta as "a treaty of peace between the king and his people in arms."

But a treaty presupposes two independent states, so the Magna Charta cannot be said to be "a treaty of peace." It might be said to be a contract between the King and his feudal barons, but the barons tried to enforce the contract by means of rebellion, if the King attempted to violate it. The Magna Charta, in form a real charter, based on the Charter of Henry I.

The character of the Magna Charta was remarkably moderate. The barons made scarcely a single demand for which there was not a precedence. They did not endeavour to set up a new constitution. The great Charter left the King still supreme in the State. It assigned practical and definite remedies to temporary evils. Unlike the American Declaration of Independence or the French Declaration of the Rights of Man, there was very little that was abstract in the terms of the Magna Charta.

Sir Frederick Pollock and Maitland in their "History of English Law" observe that the Magna Charta is essentially a conservative or even reactionary document. Mr. Jenks sees in the great Charter nothing but an attempt at a feudal reaction. Mr. Pollard in his "Henry VIII" maintains that it was only in the 17th century that the great Charter was rescued out of oblivion and was distorted and travestied to serve the necessities of the anti-monarchical opposition. Messrs Petit-Dutaillis and George Lefebvre in their "Studies and Notes Supplementary to Stubbs' Constitutional History", hold that "there is no question, in the Great Charter of John Lackland, of the reign of law; it is merely a question of engagements taken by the King towards his nobles, respect for which is only imposed on him by the perpetual threat of rebellion."

Jenks characterises the great Charter as a "positive stumbling block in the path of progress." His contention is

that the Great Charter is merely a feudal document and benefited only the baronial class. Three Was the Charter feudal in character? of the four constitutional clauses, (12, 14, 39, 40 were at first beneficial to the barons only. Two of these clauses and the twelfth, which provides that no scutage or aid, saving only the three regular feudal aids, shall be imposed, save by the common council of the realm; and the fourteenth which lay down that this council is to consist of an assembly of great and lesser tenants-in-chief. But these clauses only restricted the king from imposing one kind of tax only, namely, scutage or aid upon one class of persons namely the tenants-in-chief. The barons left to the king and they reserved to themselves the right to tallage their villeins as arbitrarily as they pleased. The assembly too, which has been wrongly supposed to be the progenitor of Parliament is composed solely of the tenants-in-chief of the crown, and no trace of representative idea can be found there. Further, the 39th clause, which runs "no freeman shall be taken or imprisoned or in any way destroyed or dispossessed or outlawed or exiled; nor will we go upon him nor will we send upon him, unless by lawful judgment of the peers or by the law of the land," only benefited the baronial class as the word "freemen" meant that class only in 1215. (But soon after the granting of the Charter the word was interpreted to mean not merely the baronial class, but all men who were in law free.) Moreover, the provision that no one was to be arrested until he had been convicted would, if carried out, have made impossible the administration of justice.

Some of the clauses of the Magna Charta were really reactionary in character. Thus clause 34 forbids the issuing of the Writ Praecipe in such a way as to remove a case from a private court to the king's court, and thus hinders the growth of one uniform legal and judicial system in England. It gives the right to every lord of the manor to try all suits relating to property and possession. The clause 61 affirming the right of baronial rebellion in case of violation of the Charter by the King, may also be taken as reactionary. Professors Mckechnie and Pollard are of opinion that the need of England in the 13th century was centralisation, but the Great Charter by recognising the powers of the barons and restricting those of the King only fostered the centrifugal tendency.

The Charter makes frequent use of the word "liberty," which meant in the early thirteenth century merely the privileges of certain class, or of certain classes ; while, as used in modern times, the word expressly denies special privileges or exemptions to any class, and affirms the common rights of all men. The Great Charter recognised the "liberties" of barons, of clergy, of towns and of merchants. Hence it has been said that these liberties represented the negation of real liberty and that "Liberties are the foes of liberty." But sometimes liberties might be the forerunners of liberty. The check imposed by the baron, clergy and powerful merchants on the despotic king gradually taught the people the theory of limited monarchy.

But Jenks has taken only a partial view of the Magna Charta. It was really no class measure. The clergy and the townsmen whole-heartedly co-operated with the barons. Stubbs calls the Great Charter as "the first great public act of the nation after it had realised its own identity." Privileges granted by the king to the feudal barons were extended by the later to the sub-tenants. Freedom given to the towns and the limiting of the royal forest were specially beneficial to the middle and lower classes. Even for the unfree villeins it was provided that their stocks should not be taken by way of fines. Certain great general principles were embodied in the Great Charter ; namely, that property shall not be taken from the subject for public use without compensation, that punishments shall not be cruel or unusual, that fines were not to be excessive, and that justice was to be open to all, freely and fairly administered. These principles were equally beneficial to all classes of people.

Though there were some reactionary clauses in the Great Charter, yet progress in laws was not wanting. Regulations about law and justice, certainly enhanced the progress of the constitution. Moreover, the essential idea of the Great Charter, that the king is bound by law, laid down the foundation of the English Constitution.

### Importance and influence of the Magna Charta

The Magna Charta has been called the most important constitutional document of all human history. Hallam has



characterised it as the "Key-stone of English liberty," to which all that has since been added is "little more than confirmation or commentary." According to Chatham, the Magna Charta, along with the Petition of Right and the Bill of Rights constitute "the Bible of the English Constitution."

But the importance of the Great Charter is not to be found in the specific provisions which it embodied but in the principle upon which it was based. It did not contain any provision for securing popular taxation, ministerial responsibility or trial by jury for the common people. What the Magna Charta definitely recognised was the principle that there is a body of law in the state, and rights belonging to the subjects or to the community, which the king is bound to regard. If he violates them he may be compelled by insurrection against him to maintain it. It was through these two principles that the Great Charter accomplished its great work for free government in the world.

A tyrant had been subjected to the laws which hitherto he had administered and modified at will. A process had begun which was to end in placing the power of Crown into the hands of the community at large.

The Magna Charta was in the foreground of men's thoughts throughout the thirteenth century. It closed one epoch and started another. The common people who had sided so long with the King, now took the side of the barons against the King. The Charter was reissued in 1216, 1217, 1225 and in 1237. In the re-issues of the Charter the clauses (12 and 14) regarding the functions and composition of the Common Council of the Realm were omitted. Both the king and the people were drifting away from the feudal council of clauses 12 and 14 towards the larger idea of a national Parliament. When Parliament was fully established, the Great Charter fell into the background. But even two years after the calling of the Model Parliament, the people thought it necessary to have confirmation of the Charter from Edward I (1297).

In the fourteenth and fifteenth centuries Parliament held the same place in men's minds which the Charter had once occupied. In the Tudor period people cared very little about the Magna Charta, because there was an identity of interest between the King and the people. Shakespeare in his "King John" did not even refer to the Magna Charta.

But when the Stuarts came to the throne, and attempted to place themselves above the law, the Magna Charta came back



quickly to men's minds. The great lawyer, Sir Edward Coke unearthed the Magna Charta and placed it before the eyes of Englishmen as the goddess of English freedom. The battle against the Stuarts was fought and won by Parliament in the name of the Magna Charta.

In the eighteenth century it was worshipped by Blackstone, and Burke. Radicals appealed to the spirit of the Magna Charta against all restrictions of liberty and franchise. Even the American colonists were influenced by it when they framed the Declaration of Independence.

#### IV. The Reign of Henry III—Experiments at Baronial constitutionalism

The reign of Henry III is constitutionally important for three reasons. First, it showed the powerlessness of the Charter to stop misgovernment. So long as the king was a minor (1216-1232), the government was carried on by the council, which was suspected by the barons. But as soon as Henry began to rule personally, he ignored the great officers of the state and sheltered himself behind the family friends and the household. Misrule followed and the barons found that it could not be checked by a mere paper guarantee like the Magna Charta. The second importance of the reign followed from the first. The barons having discovered the ineffectiveness of a paper check came to find out institutional check on the authority of the King. This sort of institutional check may be called experiments at baronial constitutionalism. Thirdly, in the struggle between the barons and the King, both sides were driven for support, particularly financial, to the growing body of the so-called third estate. This led to the formation of Parliament.

Henry confirmed the Charter several times, but always violated it. He was unpopular for five reasons. First, he gave posts and privileges to his foreign relations and favourites. This led to the discontent of the barons, who regarded themselves as the natural counsellors of the king. Secondly, his misgovernment lost Poituu to England and his acceptance of the Sicilian Crown as the vassal of the Pope drained away the resources of England. Thirdly, Henry III was a thriftless king. He extorted scutages nine times from the barons, laid

heavy fines on criminals, sold royal prerogatives to favourites and exacted tallage after tallage from the London merchants as the price of his continued recognition of their privileges. Fourthly, the English clergy opposed him because he allowed the Pope to fill the English church with foreign nominees. But the most important cause of his unpopularity was that Henry III did not carry on the government with the help of the great officers like the Chancellor, Treasurer and Justiciar, who could have been held responsible for some particular act of which the barons might disapprove. But the King, standing on his right to use his household officers for governmental work, ignored the great officers of the State and the small council. Instead of keeping the money with the Treasurer, he began to have his money paid into the Wardrobe, his own private "safe". The Treasurer had no control at all over what was paid from the Wardrobe. The Great Seal, with which the Chancellor put the official sanction on all transactions, was partly dispensed with and the King began to issue orders under his Privy Seal, which was in the custody of Wardrobe officials. The question at issue between the King and barons was, in the words of Medley, "whether the Curia, the *Consilium Regis* should be a council of magnates or a council of royal nominees, whether the government of the country should be an oligarchy or a bureaucracy."

These practices of Henry III, which cannot be called unconstitutional, demonstrated the powerlessness of the Charter to check misrule and oppression. The great Necessity for institutional check on the King Charter was no doubt a good statement of rights and claims, but in practical politics it was a mere scrap of paper. The problem of curbing the autocracy of the king still remained to be solved. What was wanted, was no mere occasional documentary assertion of rights but a permanent, regular and definite institutional check. The Magnum Concilium, provided by the Magna Charta, was too unwieldy a body for the rapid transaction of business ; and the barons did not like to spend much time at the court. If the barons could succeed in forcing the King to carry on the government through his small council composed of the Chancellor, Treasurer, Justiciar, few more officials and the magnates and ecclesiastics who happened to be at court, and in some way control it, an institutional check on royal autocracy would have been provided.

During the minority of the King, the barons exercised predominant influence over the small council. The barons wanted to keep up this system even when the King became major. In 1237, 1244, 1248 and 1249 they tried to secure the appointment of councillors and ministers—Justiciar, Chancellor and Treasurer—in whom they had confidence. The great council of 1237 threatened to depose the King. In 1243 a committee was appointed to receive an aid. In 1244 a committee was appointed to fix the conditions of money grant. One of the conditions of the grant was that the Justiciar, the Chancellor and the Treasurer would be chosen in the Great Council. In April 1258 the king demanded huge sums of money to pay off the debt to the Pope and to meet the expenses of an expedition to Wales, which had ended in a fiasco. The barons assembled in the Magnum Concilium demanded that a reforming committee of 24 members, half to be chosen from the council and half by the magnates, was to be set up. The King had to agree to this proposal. The barons made two experiments with constitutional government, the Provisions of Oxford and Simon's Parliament during next seven years.

The Magnum Concilium or the Great Council, which met in June 1258, was attended by barons with their arms. This assembly is popularly known as the Mad Parliament. The barons drew up a list of grievances and outlined a scheme of reform known as the Provisions of Oxford. The original reforming committee of 24 was to appoint the great officers every year and to hold them responsible to itself. The twelve nominees of the King to the reforming committee of 24 were to choose two members from the 12 nominees of the barons ; and the baronial twelve were similarly to select two members of the royal twelve. These four members were to choose a body of fifteen, which was to act as a standing council and advise the king. The barons did not like to attend the council frequently ; so they provided another Committee of twelve, which was required to meet the Committee of Fifteen thrice a year as representative of the community and to transact important business. The powers of the Committee of Fifteen and the Committee of twelve were not accurately defined and no provision was made for the filling of vacancies. A further body of 24 was to meet whenever a money grant came under consideration.

Thus the Provisions of Oxford set up four committees—the reforming Committee of 24, the standing Council of 15 to carry on the actual government, committee of 12 to inspect administrative work of the government and an occasional committee of 24 to keep a watchful eye on finance. None of these committees seem to contain any one from the class of lesser tenants, not to speak of the burgesses. The object of the scheme was to make the government a narrow oligarchy. Kingship was virtually put into commission by the Provisions of Oxford. It placed all authority in the council, and presumed the elimination of the King's will, though his consent was necessary for every act of the government. The baronial party, however, was too large for homogeneity and yet too small to take responsibility. Prof. Jolliffe observes that "it represented, or was under pressure from, a dozen interests which were only united by hatred of the Poitevins—the magnates of the King's party, the group of Norfolk and Hereford, the persons and interests of Gloucester and Leicester, the habitual conservatism of the *Universitas* of the barons, the more radical bachelors, and the unrepresented mass of freeholders, who had the best reasons to press consistently for reform. Only at its peril could the council of the Fifteen put its quality of a reformed Government to the test, and commit itself to action."

The Provisions, however, could not be carried out on account of the serious quarrel which broke out between Simon de Montfort, the head of the lesser tenants, a party which had been so far ignored and the Earl of Gloucester, the head of the baronial party. Taking advantage of this quarrel Henry III refused to abide by the Provisions. Louis IX of France undertook the mediation and annulled the Provisions of Oxford. Simon refused to accept his decision. This led to the civil war and the capture of the King by Simon.

Soon after his victory at the battle of Louis, Simon held a Parliament (1264) to which four knights from each shire were called. This measure showed a recognition of the need for a wider basis of authority. This Parliament devised a new scheme of government by which the king's power was practically to be handed over to a committee of nine. But the position of Simon was still very difficult. The queen assembled an army in France to invade England. Simon wanted to secure the support

of the people against the formidable forces which opposed him. So he called the famous 'Parliament' of 1265.

To this Parliament Simon called, in the name of the King, five earls, eighteen barons, and those bishops who were known to be favourably disposed towards him. Two knights from each shire were called, but two of the shires did not care to send any representative. To the assembly of barons, knights and bishops two citizens from each of the 21 specified boroughs, which were known to be well-disposed towards Simon was called. It should be noted that sheriffs were not ordered to see that representatives were sent from every borough. In spite of these defects in representation, it was a new thing to join both the shire and the borough representatives in the same assembly. The importance of Simon's 'Parliament' lies in the fact that it is the first recorded instance of the simultaneous summons of representatives of shires and boroughs to meet in a council of barons. Guizot has called Simon 'the founder of representative government of England.' But this statement is inaccurate in the sense that the system of representation had been familiar to the English people long before Simon called this assembly. Taswell-Langmead regards Simon as the 'founder of the House of Commons.' But there was no separate House of Commons at that time and no single person can claim this title, as that body came into existence through divergent causes.

Moreover, Simon only called his own partisans to his Parliament. According to Stubbs, Simon's Parliament seems 'to wear very much the appearance of a party convention. He called only a few barons and a disproportionately large number of higher clergy, who were his strongest supporters. He summoned members from 21 boroughs only, while thirty years later, Edward called members from 110 boroughs. The lower clergy were not summoned at all. Soon after the calling of this 'Parliament' Prince Edward gathered strength and defeated and killed Simon at the battle of Evesham.

The barons tried to check the arbitrary rule of the king to redress specified grievances and to control the king's small council. They failed to achieve any of these objects because it was impossible to keep a baronial council together for any length of time and because the barons were intensely jealous of one another. Their aim was selfish ; they attempted to monopolise the royal patronage to the exclusion of royal



favourites. They, therefore, failed to make an appeal to the common people, who however, were not at all conscious of their rights in this period. The efforts of the barons did not fail altogether. They kept the tradition of the Great Charter alive and restrained the power of the monarch. Many of the administrative reforms, which they introduced, especially in the sphere of local government, were made permanent in the Statute of Marlborough.

## VI. Policy of Edward I

From the constitutional point of view Edward I appears at once to be the successor of the policy of Henry II and of Simon de Montfort. Like Henry II, Edward I came to the throne after the rule of a weak king; and like him Edward wanted to strengthen the position of the king by curbing the powers of the nobility and the clergy. It was as a lawgiver and as an administrative organizer that Edward I did his most enduring work. "More was done in the first thirteen years of this reign" says Sir M. Hale "to settle and establish the distributive justice of the kingdom, than in all ages since that time put together". Though we cannot endorse so strong a view, yet the work of Edward I was unique in character. His Statutes not only interfered at countless points with the ordinary course of law between subject and subject but also made vast changes in the domain of private law.

(a) The *Curia Regis*, which in the Norman period had to do legislative, administrative and judicial work, emerged specifically as a court of justice in the reign of Henry II. *Henry II had created a separate branch of the Curia Regis, called the Common Pleas for trial of all cases between subject and subject.* Judicial reforms Jurisdiction in all criminal cases and in all Pleas of the Crown was exercised by the judges of the King's Bench. The Court of Exchequer continued to deal with cases involving revenue. In the reign of Edward I each of these three courts got its own staff of judges and each became independent of the other. These courts became strictly judicial in character having no connection with the administrative work. (b) From the time of Edward I the Lord Chancellor became the chief officer of the Realm in place of the Justiciar. The Chancellor on behalf of the King's Council, afforded a remedy for any wrong which, for any reason,



the ordinary courts had failed to redress. In course of the fourteenth and fifteenth centuries the Chancellor established a regular court known as the Chancery Court which provided equitable remedies (according to the law of Equity) for unforeseen abuses in the working of the courts of Common law. (c) In order to dispense justice, the king called to assistance a new body of advisers, consisting of great officers of household and Government and such other persons whom he pleased to call. Later on this body developed into the famous Privy Council. (d) Edward I entrusted the business of keeping the peace throughout the country to a new body of officers, known as the Conservators of the Peace. (e) By the Statute of Westminster II a good deal of new work was thrown upon the justices of Assize. Edward I did something to restrain by his *quo warranto* enquiries into the titles by which the barons claimed to exercise the despotic authority, called their liberty.

Edward I checked the power of the barons by adopting the following measures : (a) In 1278 Edward ordered an inquiry by passing the Statute of Gloucester, into all titles by which the barons held lands and Courts. His object was to break down the power of the nobles and to make every court dependant on the king. Franchise and jurisdiction of their courts were reduced. But some of the barons (as for example Earl Warenne) opposed this enquiry and Edward did not push it too far. In order to lessen the importance of the great lords, he increased the number of persons who enjoyed knightly rank and did service as knights in the field. This he effected by ordering all freeholders, possessing an estate of 20 pounds a year, to receive knighthood.

Edward I enacted two statutes *Quia Emptores* and *De Donis Conditionalibus*—with the object of curbing the power of the barons. These two laws have been called by Maitland as pillars of land-law of England. He increased the number of persons holding land directly from the king by the Statute of *Quia Emptores*. This law required that the man, who received land from another, should become the *vassals of the lord of the person, who transferred the land*.

He also helped the creation of a small number of big landlords by a statute called *De Donis Conditionalibus*, which enabled a baron to leave his land to the eldest son in such a way that he was forbidden to part with it.

The Church was growing in power and wealth in that age. Edward I tried to diminish the influence of the Church and to make it contribute to the revenues of the State. (1) By the Statute of Mortmain, Church policy he enacted that henceforward the land granted by any man to the Church should be forfeited by the lord of the grantor, or if the lord did not enforce his claim, by the king. This law checked the growth of property of the Church, which as a corporate body had no necessity of paying such feudal dues as *relief*, *wardship* or *marriage*. Moreover, the Statute prevented a man from giving his estate to the Church and receiving it back with the object of evading feudal burdens. (2) He limited the jurisdiction of the Church Court to spiritual or moral cases and to cases arising out of wills or marriage. Thus he succeeded, where Henry II had failed. (3) He proposed to levy contribution from the Church for carrying on the administration. The clergy at the command of the Pope refused to pay it. Edward I replied by placing the clergy beyond the pale of law and thus compelled them to give way.

Edward I could not cover the expenses of his French, Scottish and Welsh wars with the ordinary revenue of the State. He had to raise money by arbitrary methods. Thus in 1294 he seized all the treasure of the monasteries and cathedrals, and levied a heavy sum from the merchants by seizing their wool. In 1297 Edward again seized the wool and exacted an impost on it. The barons armed against him and he was forced to confirm the Charter with certain additional articles. By the *Confirmatio Cartarum* of 1297 he granted that his recent exactions should not be taken as a precedent, and that no taxation other than the ancient *aids*, *prises* and *customs* should be levied by the king without the common consent of the realm. "The common consent of the realm" says Maitland "was now no vague phrase, that consent had now its appropriate organ in a Parliament of the three estates".

The greatest contribution of Edward I to the growth of the constitution was the establishment of the form of Parliament. It was he who called the Model Parliament in 1295 and made Parliament an essential part of the constitution.

## II. Constitutional importance of the reign of Edward II (1307-27)

The reign of Edward II set up precedents of coercion of king by the baronial class. Edward II was the unworthy son of a great father. He was more inclined to amusement than good government. He reversed the policy of Edward I in every way and from the day of his accession to the throne embarked upon a course of action which inflicted great sufferings upon the kingdom and brought ruin to himself.

Edward I was recognised as the king of England during his absence in Palestine ; but his reign was dated not from the death of his father, but four days afterwards when the oath of fealty was taken. The throne of England was vacant for these four days. But in the proclamation issued on the accession of Edward II he was already king of England by descent of heritage. The usual words referring to the consent of the magnates of the realm was omitted in his case. From this time onwards, the old civil election dropped out and hereditary succession became the established rule subject, of course, to the paramount power of Parliament. The coronation of Edward II showed the constitutional progress which has been made since 1215. The king was asked "Sire, do you grant to hold and keep the laws and righteous custom which the community of your realm shall have chosen, and will you defend and strengthen them to the honour of God and to the utmost of your power ?" The king answered in the affirmative but broke the coronation oath soon after.

The barons had been chafing under the strong rule of Edward I. The succession of his weak son, and especially the latter's marked favouritism to a Gascon Knight named Peter Gaveston gave them the opportunity to revive as strong an opposition as had been seen in the reign of Henry III. The new king provoked the jealousy of the barons by making Gaveston the earl of Cornwall and marrying him to his own niece. In 1308 a parliament of barons compelled the king to drive Gaveston into exile. But the king called him back next year. So the baronial assembly, which met in 1310 forced the king to appoint a committee of barons to draft ordinances for the future government of the realm. Accordingly

a body of 21 Lord Ordainers was appointed from the earls, barons and bishops. These Lord Ordainers following the precedent of the Provisions of Oxford, again put the Crown into commission. The king was to fill up all great offices with the consent of the baronage, and was not to go to war, raise an army or leave the kingdom without their permission.

In 1321 the King secured the friendship of two English lords, Hugh Despenser, father and son, defeated Thomas Lancaster, the head of the baronial party and entrusted the government to the Despensers. These new favourites of the King aggrandised themselves at the expense of the nation and provoked the enmity of all classes and especially of the queen. In 1322 a Parliament was held at York and it declared that : "The matters which are to be established for the estate of our lord the king and of his heirs, and for the estate of the realm and of the people shall be treated, accorded and established in Parliament by our lord the king and by the consent of the prelates, earls and barons, and the commonality of the realm ; according as it hath been heretofore accustomed." Commenting on this declaration Tout says that "this is the most important constitutional advance made under Edward II. Henceforth no law could be regarded as valid unless it had received the consent of the Commons". But Adams thinks that "the language plainly indicates that no change in past practice was intended, and as a fact none was made, for it was long before either of the suggested rights was gained by the Commons". According to him the word "commonality" was used in a general way and the said declaration merely recognised the place of Parliament in the State.

Edward II's incurable dependence on favourites, the selfish intrigues of the barons and the personal hostility of Queen

Isabella and her paramour, Mortimer, brought about the deposition of the King. The Despensers were slain and the King was taken prisoner. The Great Seal was in the hands of Isabella and Mortimer and they

issued summons for a Parliament in the name of the King. The Parliament which met in January 1327 resolved in the midst of a noisy mob that Edward II should be deposed and his son, Edward III should be made king. The charges against Edward II were that he was incompetent and incorrigible and that he had not listened to the 'great and wise men of the realm'. The

Deposition of  
Edward II

Parliament, however, was not sure whether anybody was empowered by law to depose the king. It made its work sure by forcing him to resign. "The device of issuing writs in the king's own name to summon the Parliament," observes Maitland, "which is to depose him, the extortion of a formal resignation, make the case rather a precedent for revolution than a precedent for legal action". The baronial opposition to Edward II was merely selfish in character, but by virtue of their opposition they helped to maintain the omnipotence of law as against the caprice of the king in England.

### VIII. The reign of Edward III (1327-1377)

The constitutional importance of the reign of Edward III lies mainly in the growth and consolidation of powers of the Parliament. The Hundred Years' War with France and the Scottish war forced the king to call Parliament again and again for securing financial aid. The monetary needs of the monarch were used by the Commons to increase their constitutional power. Parliament asserted during the half-a-century of Edward III's reign that the ministers of the Crown, both local and national, were responsible to them; and that money-grants could only originate in the House of Commons, which might appropriate taxes to specific objects and audit accounts so as to see that the appropriation was carried out. This aspect of his reign will be treated fully in the next chapter.

Another important development in the reign of Edward III was the rise of a peerage which appeared as rival to the monarchy. In the fourteenth century the greater barons by forming matrimonial relations amongst themselves amalgamated many small houses into a few great ones. Thomas of Lancaster, who led the opposition against Edward II, held five earldoms and might well be called a peer (meaning 'equal') of the crown. Edward III thought that he would be able to minimise the danger of concentration of estates into a few families by forming matrimonial alliance with the big families. He married his sons and daughters into the families of these big lords. Thus the Black Prince was married to the daughter of the Earl of Kent; Edward's third son Lionel became Earl of Ulster in the right of his wife; his fourth son, John of Gaunt having married the



heiress of Lancaster became the Duke of Lancaster ; his sixth son, Thomas of Woodstock married the heiress of the Bohnus, Earls of Essex and of Hereford ; and the descendents of Edmund Duke of York, absorbed the great rival house of Mortimer. A few other great houses were also brought within the royal family circle. The titles of Dukes, Marquises and Viscounts were imported by Edward III from France and conferred on the greater barons to emphasize their new dignity. Instead of securing the great houses in the interests of the Crown, Edward III "degraded the Crown to the arena of peerage rivalries, and ultimately made it the prize of noble factions".

The reign of Edward III witnessed the awakening of national consciousness in England. During the fourteenth century the Pope lived at Avignon on the borders of France, where his association with the national enemy during the first part of the Hundred Years' War helped to turn English national feeling against the Papacy. The statutes of Provisors and Præmunire were passed by successive Parliaments to check interference of the Pope in English affairs. The Statute of Provisors (1351) protected the rights of the English patrons against Papal 'Provisions,' that is, appointments to English benefices. The Statute of Præmunire (1353 and 1365) provided a machinery to check Papal interference with royal rights in England. It punished the practice of taking suits to Rome with forfeiture of goods and outlawry. But these laws remained largely inoperative, though they formed a precedent for much stronger action in the reign of Henry VIII.

## IX. Constitutional importance of the reign and deposition of Richard II (1377-1399)

The reign of Richard II is the most interesting and instructive period of the medieval history of the Constitution. It revealed the forces of Parliament which it had acquired during a century of its existence. His reign may be divided into three periods. The first is from his accession in 1377 to 1388 when he was a minor. The second is from 1389 to 1397 when as a King he ruled in accordance with the wishes of Parliament. The third period is from 1397 to 1399 when he ruled absolutely and was deposed in 1399.



In the first period, Parliament took full advantage of the minority of the King to assume control over the executive. High officers were appointed by the Parliament which also checked the accounts. In 1381 during the minority of the king occurred the Peasants' Revolt, which resulted in the gradual extinction of Villeinage. But as the King grew older he developed a partiality for favourites and began to take an active part in the administration. The Parliament however impeached his Chancellor Michael de la Pole in 1386. But soon afterwards Richard obtained from judges the opinion that the King had the power of determining the order of business in Parliament and of dissolving of Parliament, that his ministers could not be impeached without his consent and that the judgment against Suffolk was erroneous. But in the Merciless Parliament of 1386 the united opposition of the barons thwarted the policy of the King. Five prominent lords, styling themselves the Lords Appellant, impeached the King's friends. But in 1389 the King declared himself to be of age and assumed the reins of government himself.

In the second period the nobles were divided among themselves, so they could not offer any resistance to the King. The King ruled in apparent harmony with the Parliament for eight years (1389—1397).

But in 1397 Richard II attempted to take revenge on the Lords Appellant and to govern the kingdom arbitrarily. He prosecuted Haxey, a proctor of the clergy for introducing a bill complaining against some measures taken by the King. Thus the King infringed the Parliamentary privilege of freedom of speech.

Then he caused three of the Lords Appellant to be seized on a charge of treason. In the Parliament of 1398 he obtained a grant of the revenue from wool for his life and secured the appointment of a committee controlled by himself to which the powers of the Parliament were delegated. Thus Richard became free from Parliamentary control. He exacted taxes, unauthorized by Parliament and assumed the right of nullifying statutes. He declared that "law was contained in the mouth and often in the breast of the King". He acted with a definite theory of absolutism. He banished Henry of Lancaster and

the Duke of Norfolk—two of the chief men of the Kingdom, without any trial.

When he was in Ireland in 1399, Henry came from France to claim the estates of his father, John of Gaunt, who had recently died and whose estates Richard had confiscated. The nobles of the north sided with Henry, who enlarged his claim to the dukedom of Lancaster to a claim to the throne. Richard had no party of his own, so he delivered himself up to Henry, and offered to resign the Crown. Richard was formally deposed by Parliament and Henry of Lancaster became King as Henry IV. This is known as the Revolution of 1399.

Richard II had made a resolute attempt "not to evade but to destroy the limitations which for nearly two centuries the nation, first through the baronage alone and latterly the united Parliament had been labouring to impose upon the King". He not only packed the Parliament of 1397 with his own nominees, but also secured from it an independent revenue for his life time. He further attempted to dispense with the Parliament altogether by making it delegate its power to a committee controlled by himself. "He condescended to no petty illegalities" says Stubbs "but struck at once at the root of constitutional government. He challenged the determination of his people in the most open way." So his deposition not merely signified the fall of his practice but also his theory of absolute government. "He is deposed" observes Maitland "and it is as representative of a different theory—that of a King *below* the law—that the house of Lancaster is to reign." The Parliament not only deposed a king as had happened when Edward II was compelled to yield the throne to his son, but this time they had chosen the successor. The Lancastrian kings ruled by Parliamentary title, and under them the power and privilege of both the Houses were respected.

The Revolution of 1399 was a bloodless one. The King himself resigned and the Parliament formally deposed him. Hence it was not a revolution in the strict sense of the term. Maitland regards the revolution as a reaction against absolutism of the king, and says "Richard had a theory of absolute monarchy, and he was deposed." But another cause contributed to the fall of Richard. He had offended the leading nobles, and especially Henry of Lancaster. Henry's landing in

England in 1399, precipitated the fall of Richard. The Parliament made no attempt to reform Richard or make him rule well. Henry of Lancaster was victorious in the party struggle and snatched the Crown from Richard II. Thus the deposition of Richard II was not only a reaction against the absolutism of the king but also a successful rising of the barons against the authority of the king.

<p>Both Richard II and James II had definite ideas of prerogative and Divine Right of kingship. The people succeeded in deposing both of them and in inaugurating an era of popular Government.</p> <p>Comparison between the Revolution of 1899 and 1688</p>	<p>In both the Revolutions the crown was offered to a man who had no strict hereditary claim to the throne and so had to depend on the favour of Parliament. Richard was deposed on the strength of a document resembling the Bill of Rights that led to the fall of James. In both the cases the aristocrats took the leading part and consequently oligarchy followed. New kings, Henry IV and William III defended the Church against Lollardism and Romanism respectively.</p>
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CHAPTER IV  
THE LANCASTRIAN AND YORKIST PERIOD  
(1399-1485)

The House of Lancaster

Henry IV—1399-1407.

Henry V—1407-1422.

Henry VI—1422-61 ; 1470-71.

The House of York

Edward IV—1461-1469 ; 1471-1483.

Edward V—1483.

Richard III—1483-1485.

I. Tradition of the House of Lancaster

The house of Lancaster played the role of the Opposition to the king consistently throughout the fourteenth century.

Thomas of  
Lancaster      The leader of the baronial party in the reign of Edward II was Thomas, Earl of Lancaster, the son of Earl Edmund, brother of Edward I.

He secured the resources of five earldoms by inheritance and marriage. It was he who practically ruled the country as the head of the Lords Ordainers up to 1322. He was greedy and selfish and his administrative ability was small. In 1322 Edward II personally led an expedition against him and took him prisoner. He was then tried and executed. The ostensible reason for the landing of Isabella, Mortimer and young prince Edward in Essex from France was to avenge the murder of Lancaster. Henry of Lancaster, the brother of Thomas, took the side of the queen and took a leading part in deposing Edward II.

• The council which was formed to rule the country during the minority of Edward III had Henry of Lancaster as its Chairman. But Isabella and Mortimer

Henry of  
Lancaster      excluded him from the real share of power.

He, therefore, joined Edward III in 1330 in driving out Mortimer from power, and the success of the plan vested real authority in the hands of the king. His son, Henry commanded an army in the first phase of the Hundred Years' War and gained conspicuous success in Gascony.

John of Gaunt, the third surviving son of Edward III was married to Blanche, daughter and heiress of Earl Henry, mentioned above, and got the title of Duke of Lancaster. His eldest son, Henry, Earl of Derby, was the son of John leader of the Opposition to Richard II and of Gaunt ultimately became King Henry IV. This Henry, Earl of Derby was one of the five Lords Appellant appointed in 1389. In 1389 Richard took power in his own hand. He could never forgive the Lords Appellant and punished them severely in 1397. But at this time Henry proved a traitor to his friends, sided with the King, and was rewarded with the title of Duke of Hereford. The King, however, could not rely on him. In 1398 he was banished for ten years. John of Gaunt died early in 1399, but Richard did not allow Henry to receive his father's succession in his absence. In July 1399 Henry came over to England from his exile with an army. He declared that he had come to claim his duchy and to drive away those favourites of the King who had taught him to play the despot. He thus posed himself as the champion of constitutionalism and succeeded with the help of other discontented barons in deposing Richard II.

## II. 'The Lancastrian Experiment'

It has been shown that the tradition of the House of Lancaster was a tradition of opposition to the Crown. But it does not mean that when they themselves succeeded to the throne, they welcomed the interference of the barons in moulding the policy of the government. It was rather the force of circumstances which compelled them to submit themselves to the control of Parliament, which was almost a passive instrument in the hands of the landed nobility and gentry. There was no conscious attempt to make an experiment of making the executive responsible to legislature which is the characteristic feature of modern English government. The country was not prepared for such an experiment in the fifteenth century. But there were certain factors which left no alternative to the baronial control of government and the so-called constitutional experiment was almost forced upon the country. The first factor was that Henry had proclaimed himself as the champion of popular liberty against the despotism of the king and had got the throne with the help of Parliament. His

hereditary claim to the throne was extremely weak. So he could not afford to go against Parliament. Secondly, throughout the Lancastrian period rebellions broke out at short intervals. The matrimonial policy of Edward III had raised a body of nobles who were closely related to the royal family. Many of them felt that they had as much claim to the throne as Henry had. The constant threat from rebellion made the Lancastrians rely on the support of Parliament. Thirdly, Henry V had to spend much of his time in France ; and during his absence the administration was carried on by ministers responsible to Parliament. Fourthly, Henry VI was a mere child when he came to the throne. During the long period of his minority the voice of Parliament was predominant. Over and above these, all the Lancastrian rulers were men of small ability and they could not carry on the government without the help of Parliament. Parliament being conscious of its strength busied itself on one hand with the settlement of internal constitution and establishment of its procedure and privileges, on the other hand with strengthening its control. Parliament nominated and controlled the council of the king, and the council in its turn controlled the king. Thus Parliament became the direct instrument of government. This system has a superficial resemblance to the modern cabinet form of government, and hence the older constitutional historians called it the 'Lancastrian experiment.' Modern historians think that the importance of this alleged 'experiment' has been over-estimated.

In the fifteenth century the weakness of the Lancastrian kings contributed to the triumph of the baronial ideal of the council. From the accession of Henry IV to the assumption of government by Henry VI in 1437 the barons dominated both council and Parliament and consequently perfect harmony between these two bodies prevailed. The nobles compelled Henry IV to nominate the council in 1404, 1406 and 1410 in accordance with the wishes of Parliament. Again during the fifteen years of minority of Henry VI Parliament exercised a fairly constant supervision over the work of the council. It made the councillors dependent upon itself for their salaries and prescribed regulations regarding their business. The function of the council was to advise the king upon every exercise of the royal power. Every kind of ordinance, license and pardon that the king could issue was brought before the council. The council



became the most important government institution and penetrated almost every part of government. Upto the year 1414 the council even exercised a wide discretionary authority in drawing up statutes. The Commons upto that date merely petitioned against grievances and the council often tampered with petitions before they became law. On the complaints of the Commons, this practice was given up by the council in 1414. Henceforward the Commons began to initiate legislation by presenting a bill for the king's consent. The king might accept or refuse the bill, but could not change it.

There were serious difficulties, however, in forming an efficient council in Lancastrian times. The great magnates claimed a seat in the council as a matter of right and Parliament, being dominated by them, gave them that seat. They were extremely greedy. "The members of the council", observes Medley, "were the worst offenders in disorder and neither the council nor Parliament dared to deal adequately with them."

We will give a fuller account of the growth of Parliament in the fifteenth century in the next chapter ; Composition and functions of Lancastrian Parliament but here we indicate the general lines of advance of Parliament's powers to give a connected account of the Lancastrian period.

The nobles as well as the king granted much power to the Commons, because they knew that the latter were weak and could be influenced by them. The elections to the House of Commons were in a large degree under the influence of the magnets in each county ; and it was perhaps to make their control more effective that the important Act of 1430 was passed. By this Act the right of voting in the election of knights of the shire was limited to the holders of land in freehold to the annual value of at least forty shillings (modern value of which is more than £30). This was a serious limitation of franchise, for whereas before 1430 all freemen in the shire had a right to vote, now not merely those who did not hold land, but those who held even large farms on leasehold or copyhold were forbidden to vote ; and the restriction of voting rights to landowners made the control of elections by the nobles easier. "The nobles followed by bands of retainers made "armed" elections the order of the day".

The Lancastrian Kings seldom raised illegal taxes. In 1406 the Commons established the right to audit the royal accounts.

In 1407 Henry IV assented to the principle that money grants are to be initiated in the House of Commons and are not to be reported to the King until both the Houses have agreed. The report is to be made by the Speaker of the House of Commons. Thus the predominance of the House of Commons in financial matters was secured. The Commons obtained an equal right with the Lords in legislation too. In 1414 Henry V in reply to a petition of the Commons said: "Nothing be enacted to the petition of the Commons contrary to their asking, whereby they should be bound without their assent." Thus the practice was introduced of sending up to the king not a petition but a bill drawn up in the form of a statute. In this period, Parliament established three important privileges, namely, freedom of speech in Parliament, freedom from arrest and the right to determine contested elections.

The Lancastrian Parliament was anxious to interfere in the details of administration. The interference of Parliament made the administration weak. The Lancastrian kings tried to make Parliament an instrument of government. They did not like to take responsibility but wanted to make Parliament responsible for everything. This policy resulted in the lack of administration, which culminated in the period of the Wars of the Roses.

The chief cause of the breakdown of the Lancastrian system was the selfishness of the great lords who were about fifty in number. They controlled both the council and the House of Commons. The Hundred Years' war had enabled these lords to recover the strength, which they had been losing in the fourteenth century on account of the decay of feudalism. The monarch often gave contracts to the barons for the recruitment of soldiers. The barons collected more soldiers than was necessary for the king and utilised the extra soldiers for their private ends. They had already begun the practice of maintaining number of retainers, who were used for carrying on private wars and in spreading terror in the neighbourhood. The great lords, being connected with the royal family by the matrimonial policy of Edward III, considered themselves as equals or the king. The weakness of hereditary claims of Henry IV on the throne made them more turbulent than ever. The nobles sought to control patronage in their own shires, to nominate the sheriffs, to choose the knights of

the shire for the House of Commons and to nominate the Justice of the Peace.

The dislocation of economic life on account of the conversion of agricultural land into pasture land for sheep-breeding created a large class of unemployed labourers who roamed about the country creating disorder. The magistrates were unable to check them because many of the unemployed hordes had put themselves under the nominal service of some great lord. The number of the unemployed became still greater with the cessation of the Hundred Years' war. The discharged soldiers became retainers under the lords. Those retainers who had experience of war were employed by the lords in carrying on their private warfare. The loss of English possessions in France in 1453 inflicted heavy commercial losses upon the merchants who became very much discontented. They lent their support to the Yorkist opposition. Over and above these, the followers of Wycliffe were preaching a doctrine of social revolution. They incited the masses to rise against the unworthy clergy and nobles and to deprive all unworthy men of their offices and lands.

"The Commons by constitutional reform", observes Pollard, "reduced almost to insignificance a sovereignty which the Lords could not overthrow by rebellion; and by insisting that the king should 'live of his own' without taxing the country, deprived him of the means of orderly government. The ideal constitution approached so nearly to anarchy that it is impossible not to suspect collusion between them and the Lords". The country at large lacked education and did not understand constitutional government. In the words of Stubbs, 'constitutional progress had outrun administrative order.' Democratic government can only be enjoyed by a nation which has got trained and educated citizens.

The poverty and weakness of the King was the immediate cause of the breakdown of the administrative machinery. Henry IV had to waste the crown land in securing the support of the baronage. The Lancastrian kings were not extravagant, but the expenses of government had increased. Parliament was unwilling to vote the taxes necessary for carrying on the government efficiently. The monarch had no other alternative but to raise loans. But the high rate of interest which had to be paid made the government almost bankrupt. The soldiers, ordinary officers and the judges could not be paid regularly.

The result was wide-spread bribery and corruption. The sheriffs empanelled the jury in the shire and royal courts, and through the sheriffs the local magnates exercised their influence on the judicial administration. The retainers often intimidated the Judge and the Jury and made it a point to see that their lord is not punished. With the break-down of local justice, violence began to be met by violence and the noble families waged war against one another.

### III. Policy of Edward IV

“Edward IV’s policy”, says Trevelyan “was faulty and incomplete rehearsal of the policy afterwards pursued by Henry VII”. He made good his claim to the throne rather by conquest than by Parliamentary title. So he did not care to respect the rights of Parliament and began to rely less on taxes voted by the Commons than on carefully modulated “benevolence” or forced gifts from individual subjects. At first he was little in favour of the king’s council which had been an instrument of aristocratic power under the Lancastrian kings. But in the latter part of his reign he revived the council as an instrument of the king’s personal rule. He tried his best to curb the power of his overmighty subjects i.e. the great barons. His own brother, the Duke of Clarence, was not spared when he intrigued against the King. In many respects Edward IV was a fore-runner of the Tudor monarch. Hence he has been called the founder of the “New Monarchy”.

But Edward IV failed to establish the King’s Peace in the counties. He could not find out any effective plan for strengthening the executive in the enforcement of order. “Private war, maintenance, and estate-jumping flourished only a little less after Towton and Tewkesbury than while Henry VI still sat on the throne”. Moreover, Edward IV committed a fatal mistake in raising up his wife’s relations, the Woodvillies and Greys, as parvenu nobles.

### IV. Effects of the Wars of the Roses

The Wars of the Roses produced important effects on the constitutional development of England. More than one half of the English nobility were slain during the war. Most of those who survived lost their estates. The war thus marked the final downfall of feudalism in England. The war weakened the hold

of the nobles over the villeins and enabled the latter to assert their independence. The nobles had restrained the kings from reigning as absolute monarchs. Now that the once proud and powerful barons were ruined and their confiscated estates had gone to increase the influence of the King, the House of Commons was left unaided to face the augmented power of the Crown. For generations after the Wars of the Roses it was impossible to discover in the English government any clearly defined and effective counterpoise to the royal power.

But the Commons welcomed the introduction of strong monarchy in the Tudor period. They had suffered much from turbulence of the feudal nobles during the Wars of the Roses. Parliament was ready to be subservient to royalty, "like a prentice serving his time and fitting himself to become partner and heir".

## CHAPTER V

# PARLIAMENT, CHURCH AND ADMINISTRATION IN THE MIDDLE AGES

### I. Origin of Parliament

The word Parliament comes from the French word *Parler*, 'to speak'. Originally it signified the talk itself and up to the thirteenth century had no connection with the idea of representation. According to Maitland, the term signified, even at the end of Edward I's reign, an act rather than a body of persons. It was by slow stages that the word came to signify the 'talk' of a particular kind namely, those which the King had with the 'estates of the realm,' and still more slowly did it come to mean the body of men whom the King summoned. At the beginning of the 14th century any meeting of the king's council that had been solemnly summoned for general business seemed to have been a Parliament. The presence of the representative elements was not necessary for making a law in Parliament. Thus the Statute *Quia Emptores* was issued just a week before the knights summoned for that Parliament arrived. The assembly, called in 1305, continued to be not only a Parliament, but also a "full Parliament" after everyone—earls, bishops, barons, as well as knights of the shire and burgesses, except members of the council had been dismissed. "There were endless councils without a Parliament ; there could be no Parliament without a council. The council was the first of the constituent elements in Parliament". In the thirteenth century the king and his councillors alone could constitute the Parliament. A meeting of the King's Council to which the prelates and barons were invited would be the *Magnum Concilium* or Great Council. If the representatives of the shires and boroughs attend either the small or the Great Council the assembly would be Parliament ; but even if they did not attend, the council (great or small) might be called Parliament.



The full name of Parliament is the High Court of Parliament. The King's Council in Parliament was the King's High Court of Justice. Individuals as well as communities such as shires and boroughs were summoned before this High Court to give an account of themselves. The communities could appear only by the persons of their representatives who were appointed to answer for the whole community. Representation and election were well-known practices in England in the 13th century. Representative principle was employed in a limited way in the Anglo-Saxon period, though some modern writers have disproved the 'Teutonic theory' of origin of representation. Representation was used extensively by the Church, and especially by the Dominican order, whose organization covered the country by the middle of the 13th century. The practice of electing assessors in the shires to fix the value of real and personal property for purposes of taxation, and jurors to present criminal matters before the King's Justice was common in the twelfth and thirteenth centuries.

By the time that Henry II's system of sending itinerant Justices regularly to shires was in operation, a special full meeting of the shire court was convened to meet the King's Justices. Not only the freeholders who owed suit in the shire, but also the bailiff and four men from each village and twelve burgesses from each borough had to attend the special meeting of the shire court. The jurors both for civil and for criminal cases as well as for the assessment and levying of taxes on personal property were elected in the shire court. It has been well said that the shire court was almost like a miniature Parliament.

The representatives of a shire had sometimes to appear before the King's court to defend or justify the decision of the shire court. The representatives were not representatives of individuals, but they represented shires and boroughs. In 1226 four knights were called before the King's Council from each of the eight specified shires to exhibit complaints against the sheriffs. "It is well to remember" observes Maitland, "that all this had been so for a long time before the knights of the shire were summoned to Parliament. In summoning the county to send representatives Henry, De Montfort and Edward

were only putting old machinery to a new use". Similarly, Pollard writes that 'the issue of Simon's and Edward's Writ did not evoke a new institution out of the void. They merely grafted new buds on the old stock of the *Curia Regis* and it was the legal sap of the ancient stem that fed and maintained the life of the medieval Parliament."

The earliest case of the summons of representatives to the King's Council is said to have taken place in 1213, when John asked the sheriffs to send the barons and four discreet knights of the shire. But there is no evidence to show that this assembly ever met. The first authentic case of calling an assembly of representatives for the grant of taxation is to be found in 1254, when Henry III was absent from England and his queen and the Earl of Cornwall summoned two knights from each shire to 'grant an aid'. In 1261, the barons, now in open opposition to the king, asked three knights from each shire to meet them at St. Albans, but the king ordered the same knights to meet him at Windsor. Thus the barons and the king vied with one another to get the support of the popular element. In 1264 when Henry III was a captive, writs were issued in the King's name to send four knights elected in the shire to London. In 1265 Simon convened his famous 'Parliament', to which for the first time in history the borough representatives were invited to sit side by side with the knights of the shire.

## II. Parliament of Edward I

Simon's 'Parliament' seems to 'wear very much the appearance of a party convention'. It did not contain any representative of the lower clergy. Many of the old baronial families were absent from it. Moreover, the

Simon's claim to be the creator of the House of Commons knights and burgesses were dismissed long before the assembly came to an end. Medley rightly points out that the continuance of the council after the dismissal of the representa-

tive members forbids us to suppose that Simon de Montfort contemplated the inclusion of the knights and burgesses in a Magnum Concillium. Simon cannot, therefore, be called the creator of the House of Commons. But to him certainly belongs the credit of calling simultaneously representatives of the shires and the boroughs along with some of the more usual members of the Great Council.

The precedent of Simon was not immediately followed by Edward I. He summoned various kinds of assemblies to consult with him and his council at different times.

Parliaments  
between  
1273-1294

Sometimes it was a Great Council of barons ; sometimes the knights of shire alone were called and sometimes the burgesses accompanied them. Sometimes the higher clergy alone were summoned and in one instance two assemblies were called, one in the south and the other in the north. In 1273 four knights from each shire and four citizens from each town joined the magnates in taking the oath of allegiance to the King. In 1275 the King called all the elements which later on appeared in the Model Parliament of 1295 excepting the lower clergy. This shows that we cannot accept the theory of Stubbs (and accepted by Montague and many other writers) that Edward was making experiments with the composition of Parliament and that in 1295 only he made up his mind. In 1283 he called the representatives of the clergy and the Commons only at two places—York and Northampton. Again towards the end of the same year he called the barons, two knights from each shire and two burgesses from each of twenty cities or boroughs to witness the trial of the Welsh Prince, David. But in the Parliaments of 1290 and 1294 the towns were left out. The lower clergies were summoned only to a joint special assembly in 1294 to vote a grant to the Crown.

In 1224 Edward I brought together the lesser and greater barons, the knights and burgesses and the lower and higher clergy in an assembly. The two archbishops, all the bishops, the three heads of religious orders and 67 abbots, 7 earls and 41 barons were summoned by special writs. Two knights from

each shire and two citizens from each borough were summoned by a general writ. The archdeacon, and two proctors from the clergy of each diocese and one from each cathedral chapter were also summoned. It was a body of rather more than 400 persons. Thus the Great Council consisting of feudal barons was amalgamated with the new representative body. "It is this amalgamation", writes Pollard, "between 'estates' and 'Parliament' rather than his addition of burgesses to the meetings of tenants-in-chief that constitutes Edward's claim to be the creator of a Model English Parliament". The model set up in

The Model Par-  
liament of 1295

1295 was followed only in 1296, 1300, 1305 and 1307, and it took forty years more to accept it invariably as the Model Parliament. Edward I, however, cannot be called the 'founder of the House of Commons' because the Parliamentary institution, as we know it today, has not been created by any single person ; it was never deliberately planned by anybody ; it has grown in course of time.

The lower clergy soon dropped out of Parliament. They preferred to vote their grant through the Church Convocation. The Model Parliament sat in one house ; and it was only during the next half-a-century that the two houses were differentiated. It is necessary to note that at the time of calling the Model Parliament or even at the end of Edward I's reign the distinction between the Council and Parliament was not clear ; nor was there any clear idea as to what might or might not be done without the consent of the popular representatives. It seems that the Commons were present before the Council of the King in the capacity of inferior persons to assist the royal government.

In the writs of summons in 1295 to the prelates alone occurs a quotation from the code of Justinian to the effect that 'what touches all alike should be approved by all'.  
 Motives of Edward I in calling Parliament From this it has been inferred by some eminent historians that Edward I was inspired by the ideal of popular government. Had this been true, he would not have enacted his most important laws in his council after dismissing the popular elements. Had he been so solictious about consulting the opinion of the people, he would not have taken pains to secure a Papal Bull in 1305 absolving him from his promise of 1297 to observe the Charter. That he was not eager to consult the people in making laws is clear from the fact that the only statutes of his reign drawn up in the presence of the Commons were those of Westminster (1275) and Carlisle (1307).

The facility of raising taxes on the growing personal wealth of the country was one important motive of calling Parliament. The king found that separate negotiations with the different communities for raising taxes involved consultation with the baronial council, the two provincial convocations, the 37 shires and nearly 100 boroughs. It was much simpler to get together the representatives of these bodies in a Parliament. But at the

same time it should be noted that there is no evidence that the king asked any financial aid of the Commons in 1288, 1298, 1300, 1302, 1305 and 1307.

Edward I wanted to check the baronial oligarchy by Parliament. He summoned to the Great Council the non-tenurial classes as a counterpoise to the feudal barons. When he called the representatives to meet with his Great Council in 1295, it was chiefly with the intention of strengthening his administration. Parliament was the High Court of Justice, and to it petitions were made by individuals and communities. The king found in such petitions the means of getting detailed information about the doings of the sheriffs and other persons of importance. "Parliament did not clamour to be created," writes Pollard, "it was forced by an enlightened monarchy on a less enlightened people. A Parliamentary 'summons' had the imperative, mandatory sound which now only attaches to its police court use; and centuries later members were occasionally 'bound over' to attend at Westminster, and prosecuted if they failed. On one occasion the two knights for Oxfordshire fled from the country on hearing of their election, and were proclaimed outlaws. Members of Parliament were, in fact, the scapegoats for the people, who were all 'intended' or understood to be present in Parliament, but enjoyed the privilege of absence through representation".

### III. Growth of Parliament in the 14th century

If the 13th century was the period of origin of Parliament, the 14th century was the age of its development. During the 14th century the Parliament gradually established three fundamental rights, namely—(1) the control over taxation (2) the right of legislation along with the king (3) the right to criticise and in some respects, to control the administration. The financial necessities of the king induced him to grant important rights to Parliament. Parliament may be said to have bought its powers by supplying the necessities of the king.

At first Parliamentary grant was one among the many sources of revenue. The revenue was the king's money.

The king was expected to live on his own feudal sources of income but these were not sufficient to meet the expenses of the wars, which the first three Edwards made against France



and Scotland. So the kings had to apply frequently to Parliament for money. Parliament made grants on condition of redress of grievances. Gradually Parliament wrested all independent sources of income from the king's hand.

In 1297 Edward I was obliged to admit the principle that the king would take no aids, tasks and prises, except the customary tasks and prises, without the assent of the realm. Though the high road of *direct taxation* was thus barred against the king yet he continued to exact tallage from the royal demesne. This was stopped by Statute of 1340 which declared that "henceforth no charge of aid should be imposed on the nation except by common assent of prelates, earls, barons and other magnates and the commons of the realm assembled in Parliament." The year 1340 is a landmark in the history of Parliament as the king practically lost his power to impose direct taxes on the people.

But in the sphere of indirect taxes the king still extorted money from the wool-merchants. Parliament claimed to control the imposition on wool in 1362. By successive statutes of 1371 and 1387 the duty on wool was made subject to Parliamentary sanction. In 1373 Parliament began to grant the king Tonnage and Poundage. These were customs on wine and merchandise. By the end of the 14th century the theory was fairly established that the king could not tax the people without consulting the Parliament. The constant struggle between king and barons under the three Edwards put the Commons almost in the place of umpire. They made attempts to assert that money-grants could only originate in the House of Commons which might appropriate taxes to specific objects (1353) and audit accounts (1340) so as to see that the appropriation was carried out.

In the 14th century the right of both the houses to confer in the making of laws was clearly established. At first the Commons were mere petitioners and the king could make substantial alterations in the petitions while converting them into Statutes. Statutes were made by the King with the consent of the magnates and at the request of Commons. In the course of the 14th century the Commons established the theory that the king should not make alterations in the wordings of the petition. In 1322 Edward II annulled the ordinances of 1310 on the alleged ground that they



had not been made originally in the full Parliament and announced the principle that legislation required the consent of the prelates, earls, barons and 'commonalty of the realm and according as it hath been heretofore accustomed.' The last clause shows that no new advance was made by the commons, who still remained mere petitioners.

The king was the real head of the executive government in the 14th century. The baronial party in the name of the Parliament made several attempts to control the executive. In 1341 the barons made a demand that the great officers and judges should be appointed in Parliament. But the policy was not successful. In 1376 the baronial opposition forged the new weapon of impeaching the unpopular ministers of the king and thus indirectly controlling the administration. The Good Parliament of 1376 impeached several of Edward III's ministers, most prominent of whom were Latimer and Neveill. In 1386 Suffolk—the minister of Richard II was also impeached. The deposition of Richard II by Parliament in 1399 and the election of Henry IV to the throne made Parliament the strongest factor in government for the time being. By the middle of the fourteenth century Parliament was divided into two Houses. Thus the fourteenth century was a time of great Parliamentary advance. "Parliament's form of organization was determined, it had greatly curtailed the right of arbitrary taxation, it had come to be consulted in public business ; it had claimed a voice in the appointment of ministers and the right to call them to account ; it had deposed one king (Edward II) ; before the close of the century it deposed another (Richard II) and even established a new line of succession."

#### IV. The form and composition of Parliament in the fourteenth and fifteenth centuries

The division of Parliament into two Houses took place in the middle of the fourteenth century, but the House of Commons as an institution was not known by that name before the middle of the fifteenth century. The word Commons did not mean the 'common people' but the 'communities' which were represented. Parliament used to meet in the Parliament Chamber of the King's palace. The Lords used to sit there at the Council table and the Commons in the

capacity of humble petitioners in the presence of the King's Court stood behind a wooden partition, known as the 'bar'. It was only towards the middle of the fourteenth century, certainly before 1276, that the Commons began to meet in a separate apartment, usually the Charter House of Westminster Abbey to discuss the King's orders.

The House of Lords consisted usually of two archbishops, 18 bishops, 28 abbots and a number of lay peers. The lay peers, originally got the right to attend by virtue of 'barony by tenure'. The major barons had the right of receiving individual summons to the Great Council, as is known from the Magna Carta. Those who had ever received such a summons considered themselves entitled to get it for themselves and their descendants. Thus 'barony by writ' was added to the 'barony by tenure'. In the reign of Richard II barons came to be created by Letters Patent, in which the King conferred upon the grantee and his heirs the title and obligation to attend Parliament. The number of lay peers varied round the figure fifty as old families died out and new peers were created.

The representative clergy began to show their disinclination to attend Parliament soon after 1295, because of their aversion to mix with laymen in a secular body. For about forty years the king made some attempts to secure their presence. But as he got all the money he wanted from them through their Convocations, he did not mind their absence. The upper clergy, consisting of the bishops and abbots, continued to attend Parliament, not because they were clergymen, but because they held land from the king by virtue of barony by tenure. It is, therefore, quite natural that the spiritual barons should join the lay barons in forming the House of Lords, the earliest reference to which as separate body occurs in the reign of Henry VIII.

The knights of the shire belonged socially to the same class as the barons ; but being lesser tenants, they had no right to attend individually. They were summoned by a general writ to the sheriff, like the burgesses. The closing years of the reign of Edward II and the opening years of that of Edward III seem to be marked by the earliest common

petitions of the knights and burgesses, who came eventually to constitute the House of Commons.

The great number of boroughs represented in any medieval Parliament was about 120, the usual number was about 80. The number of shires was 37. Thus the House of Commons would usually contain 74 knights of the shire and about 160 members from cities and boroughs. Although the landowners were the most powerful class in the kingdom, and although the great mass of the people lived in the country, the representatives of the shire were far fewer than the representatives of the towns. The villeins who constituted a large, although diminishing class in society, had no share in the administration of the country or in parliamentary representation. The landless freemen, whether tenant farmers or simple labourers were also disqualified from franchise.

An Act of Henry IV passed in 1406 provide that the election of members should take place in the full county court. But an Act of Henry VI, passed in 1430, limited the county franchise to persons having a freehold worth at least 40 shillings a year. In the counties men of birth and estate would most likely be elected. A statute of Henry VI required that the persons elected by the counties should be belted knights, resident in the area from which they sought election. But there is evidence to show that both before and after the passing of this Act many simple esquires were elected by the counties. No general statute regulating the qualification of borough members was passed until 1711.

### V. The nature and importance of Medieval Parliament

Montague holds in common with many other eminent authorities that "a medieval Parliament was an assembly of Estates of the realm. If an Estate of the realm were too numerous to appear in person, it was represented by persons chosen by the corporate bodies which made up that Estates". The three estates, referred to were those of the clergy, the nobles and the commons. But Pollard believes that the idea of three estates was not present in England until the 15th century and was then largely a French imitation. There were three causes for which the

The myth of  
three estates

English Parliament did not become an assembly of three estates. First, the clergy preferred to tax themselves and to legislate for the church in the Convocation. The prelates and abbots, who held their estate by baronial tenure, and were specially summoned like other barons, continued to sit in Parliament, but did not form a separate house. Secondly, there was no rigid and exclusive class of nobility of blood in England. The younger sons of a peer rank as commoners. Moreover, the medieval English kings did not summon all the barons by special writ. Only the great barons were called to sit in the House of Lords. "If the House of Lords is an estate at all," remarks Pollard, "it is an artificial estate created by the action of the crown out of heterogeneous elements gathered from all the three normal estates of theory—bishops and abbots from the first, earls and barons from the second, and councillors, judges and secretaries from the third". Thirdly, the minor barons, though belonging to the second estate, the nobility, sat in the House of Commons as knights of the shire. The king called them by a general writ and so they sat with the members of the borough in the House of Commons. The House of Commons was not a third "estate" because it was a concentration of all the communities of English shires, cities and boroughs, and did not consist of a single class.

At first the Commons played the role of suitors and the lords that of counsellors of the Crown in Parliament. It was the Crown which legislated on the petition of the Commons and on the advice of the Lords. There were two kinds of petitions.

Legislation  
by petition

Some petitions were presented by individuals or a small group of individuals for the redress of private grievances ; others were presented by organised bodies for the removal of certain public grievances. The king received the petition and took action only when he felt the need of doing so. Naturally many petitions remained unheeded. Soon after the calling of the Model Parliament, petitions began to be presented to Parliament and not to the king. The king looked into the petitions after Parliament had been dissolved. A body of judges was entrusted with the duty of converting the petition to statutes. This afforded the opportunity to the king to tamper with the statutes of which he did not approve. Sometimes the object of the petitioners was frustrated by the addition of a saving clause ; sometimes additions were made changing the

substance of the petition. In 1340, Parliament for the first time, appointed a special committee of its own to convert petitions into statutes. In 1348, it demanded that the king should not alter the answer he had given in Parliament. The expenditure of government and war compelled the king to appeal to Parliament for supplies ; and Parliament insisted that the grievances complained of in petitions should be redressed before the grants were voted. The practice of changing the substance of petitions had to be given up early in the Lancastrian period. In 1414 Henry V granted that "from henceforth nothing be enacted to the petitions of his Commons that be contrary to their asking, whereby they should be bound without their assent." In spite of this, changes were often made in the petitions. The practice of introducing drafted bills instead of petitions in either house began late in the reign of Henry VI. Henceforward (till 1911) statutes began to be made "by the King's Most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled and by the authority of the same". Thus the House of Commons rose from the position of humble petitioners to a co-ordinate law-making body. But it must be remembered that the Crown has never been completely debarred from legislating without Parliament by means of Ordinance, Proclamation and Orders-in-Council.

The freedom of election was often infringed. Sometimes a mighty noble interfered to secure the Parliamentary election of his nominee ; sometimes the election sheriff interfered to secure the return of persons subservient to the king ; sometimes a disorderly mob forced the sheriff to send somebody it liked. At first the constituencies showed little interest in electing members, because election meant payment of wages to members by the constituencies. During the reign of Edward II wages were fixed at four shillings a day for the knights of the shire and two shillings for the burgesses. But towards the end of the fourteenth century a seat in Parliament began to be valued a little. The knights of the shire could make their influence felt in the House of Commons. But there is no evidence of such increased interest on the part of the borough members.

In the 13th and greater part of the 14th century, a good deal of administrative work used to be discussed and done in Parliament, which usually met three times a year. But as



Parliament came to be expanded and popularised, it became less suitable for the transaction of administrative work. The more the actual details of administration were withdrawn from Parliament, the more it began to insist upon the general responsibility of ministers. A medieval English Parliament was called almost every year and lasted only for a short session. Hence members could not acquire any experience in the business they had to transact.

The most significant fact about the services of Parliament in the middle ages was that it made the English nation and the English State. Down to the time of Henry II, there was no single system of law common to all parts of England. Politics, too, was local and provincial; the people regarded themselves as West Saxons, Mercians or Northumbrians. The difficulties of roads and communication stood in the way of free mixing of the people with one another. It was Parliament which focussed centrifugal forces and perpetuated that sort of common activity which was noticeable at the time of wresting a way the Great Charter from John. "By its means" says Pollard, "shire was linked with shire, borough with borough and class with class; and dissociation of the feudal system was brought to an end. It was the personal intercourse of their representative in Parliament that made the Northumbrian and the West Saxons realise their common bonds and common aspirations, and led barons, knights and burgesses to merge their social distinctions in common political action. Just as common law was hammered out in the courts at Westminster and transmitted throughout the land by itinerant justices, so a common political sense was evolved from the communion of class and locality in parliament, and communicated by slow degrees through members to their constituencies." Parliaments were chosen twice or thrice every year and each Parliament sat for only about a fortnight or three weeks. Many persons in the same constituency were, therefore, sent by turn to Parliament. They thus got some kind of acquaintance with Westminster politics and imparted their knowledge to the countryside.

In the age of the Magna Carta we find the barons insisting on the maintenance of their 'liberties', or special privileges against the common people. One of the greatest historical services rendered by Parliament in the middle ages was to



transform these 'liberties' from the privilege of the barons into the common inheritance of the English people.

### V. Evolution of the Curia Regis

Throughout the middle ages the king in his Council was the mainspring of the government. The Norman kings continued the Anglo-Saxon practice of seeking advice from the great men present in their court; but such great men were now almost invariably the tenants-in-chief of the king. The body continued to be called the Witan for sometime, but the common designation for it came to be Curia which simply means court. "Sometimes it is called the *Curia regis* or *Curia domini regis*, sometimes the concilium (council) or magnum concilium (Great Council); it is impossible to give a precise meaning to these various words, which were used in haphazard way" (Prosser and Sharp). Ordinarily the king would consult expert councillors like the Treasurer, Chancellor, Justiciar, Justices and Barons of the Exchequer, his household servants and a few barons who might be present in the court. But there would be occasions on which it would be advisable to consult a larger circle consisting of the tenants-in-chief. In the latter case the body would be predominantly a feudal assembly and would be often described as the *magnum concilium* or *Great Council*. In either case the decision arrived at would be that of the King's Council. In the reign of Edward II the term secret or privy council was used to stigmatise a committee of the king's personal followers. But in the next reign we meet with the term 'Continual Council' which showed the need of choosing an inner council of permanent officials. This small council was the instrument for carrying out the king's will.

The sole qualification for attending the Council came from the king's summons. The Magna Carta made the rule that the greater barons-in-chief would be summoned individually and the other (lesser) tenants-in-chief through the sheriff. We have already described how the barons tried to convert the council into a council of magnates, while the king tried to make it a council of royal nominees. It has been estimated by Maitland that Edward I's Council, composed chiefly of experts, consisted of about seventy members. Edward I used to call three times a year a full meeting of his officials and added to them by

special summons a number of clergy and barons and later on the knights and burgesses. Such a full body was known as Parliamentum or Colloquy of Counsellors. Parliament thus developed out of the King's Council and the Great Council is still present in the House of Lords.

As the administrative work of government became far greater than could be done by any central body, committees of Councillors came to be formed. The first of such committee to be formed was one to deal with the management of finance. In the reign of Henry I the Exchequer was formed.

Besides supervising the collection of king's revenues and drawing up accounts, it tried cases concerning finance. Under Henry II the judicial work of the Curia Regis was entrusted to five members of the household, who were not to leave the King's Court. This has been supposed to be the origin of the Court of Common Pleas which dealt with civil cases between subject and subject. Criminal cases were tried by those judges who travelled with the king till the middle of the 13th century. In the reign of Edward I such judges formed the Court of King's Bench. The Exchequer, Common Pleas and King's Bench, originating merely as committee of the Curia Regis, became gradually independent and formed the three great courts of Common Law. Another committee of the Curia was the Chancery. The head of the Chancery was the Chancellor, who had at first the duty of conducting the correspondence of the king and drafting the State documents. In the reign of Henry III the Chancery was tending to 'go out of the household' and to become a separate department. The people addressed petitions to the Chancellor or the King-in-Council in those cases of grievance which could not be redressed in the ordinary court. The king used to hand over such petitions to the Chancery. The Chancellor, by the time of Richard II, came to exercise a peculiar jurisdiction of his own which was much more informal than that of the Common Law Courts. He was allowed to decide the difficult cases, for which there was no precedent according to his own notion of right and wrong. Thus the Chancery came to dispense the law according to Equity.

Another offshoot of the Council was the King's Wardrobe, which became 'the great spending department,' of the government in the time of Edward I. The Controller of the Wardrobe

was the keeper of the king's Privy Seal. The Chancellor used to keep the Great Seal but in the 14th century with a view to avoid responsibility he refused to affix it without a warrant of authorisation under the privy seal. Thus the keeper of the privy seal came to exercise very important functions.

The Council threw off the special exercise of certain functions to new bodies like the Exchequer, the King's Bench, the Court of Common Pleas, and the Chancery but it still retains the power to exercise the same functions at will because it is the peculiar organ of the royal prerogative. Parliament has grown out of the Council and got the sole right of enacting statute but the Council can still make one kind of law, called 'the Order-in-Council' which, however, is issued now under strict Parliamentary supervision. By the end of the 14th century the distinction between statutes made in Parliament and Ordinances issued by the king-in-council was recognised. The later was not to encroach upon the realm of Common Law. In the later middle ages the Council came to perform much of the function of the present day.

## VII. Evolution of the Common Law

English law toward the end of the middle ages consisted as it does even today, of three elements, namely, Common law, Statute Law and Equity. The Common Law was definitely an unwritten law before the reign of Edward I. Its root goes back to the Anglo-Saxon age when, despite the lack of national unity, certain legal usages and forms were common to the whole country. Such customs in order to be recognised as common law must have been observed continuously from the day of antiquity. Many of these customs and usages were declared as "dooms" or ordinances by the king and the Witenagemote. The centralising policy of Henry II and especially the visits of itinerant justice, displaced the diverse local usages and gave rise to customs common to the contrary. In France, on the other hand, the local customary laws did not yield place to one uniform system of law before the French Revolution.

Three factors contributed to the tendency of the Common Law to take something of a settled character. First, the unauthorized development of procedure by the issue of new writs was checked by the establishment of Parliament as the one proper organ of legislation. Secondly, a series of precedents

by judicial decisions was established. The decision of a court was followed in all analogous cases subsequently arising. Thirdly, a body of professional lawyers arose and their opinion came to be considered authoritative. Thus we have in the 12th century. Ranulf Glanvill who wrote a "Treatise on the laws and customs of the English", in the 13th century Bracton, in the 15th century Littleton, in the 16th century Fitzherbert, in the 17th century Hale and Coke and in the 18th century Blackstone. The indirect influence of the Roman Law had also its share in the development of the Common Law. In those cases where no precedent could be found, the judges used to hear arguments drawn from Roman law. Similarly, there were contributions from the Canon law and the 'law merchant' or rules employed by European traders for the settlement of disputes among themselves. It was through these processes and influences that the Common Law has grown up. Its chief characteristic, as distinguished from the statute law has been that it was at no time definitely made or enacted by any person or assembly.

### VIII. The Church and the State in the Middle Ages

In the Anglo-Saxon age Church and Estate worked together with the common object of maintaining as much orderly unity as possible. It has been surmised that from the ninth century the Church Council merged into the Witan of the West Saxon kings. In judicial matters, the union of Church and State was even closer. The clergy were subject to the jurisdiction of the Hundred and Shire Courts in all matters of which these courts took cognizance. Hence the presence of bishops and priests in these courts. In criminal cases, a special procedure was necessary in the cases of clergymen, and the bishop had to declare by virtue of his position as the 'Lord and Patron' what the procedure was. There were great Churchmen like Dunstan, who guided the affairs of the State. The bishops were usually appointed by the King with the consent of the Witan.

The Norman conquest broke down the insular isolation of the English life and opened the flood-gate of continental culture. Causes of conflict in the middle ages The law and language, the ritual and the organisation of the Church were all imported from abroad ; and almost all the important posts in the episcopate were filled up by foreigners. It has been well said that the history of the constitutional

relation between Parliament and the Church turned mainly on the friction between a secular body growing more and more national, and an ecclesiastical body clinging more and more clearly to the international system on which it was based. As the State in England was Teutonic and the Church was Latin, the hostility between these two mighty organisations was fundamental in character. The Teutonic State came to be organised on more or less democratic basis, while the Latin church remained autocratic. Laws were made in the Church by Papal order, while in the English State they were made in the representative assembly called Parliament. The State Court used jury, while the Church, claiming infallibility, did not care to invoke the aid of common intelligence. Similarly, the Pope imposed taxes without taking the consent of the people. The conflict between Church and State was all the more complex, because there was no clear demarcation of jurisdiction between the two. Clergymen were under the law of the land as well as under that of the Church; laymen were also subject to Canon as well as civil law. So long as neither the Church nor the State was national, the antagonism between the two was not very sharp; but when the State came to be more and more national and the Church more and more Roman, the conflict became acute.

The influence of the State over the Church was exercised by the maintenance of the royal supremacy. We have already described how William I prevented the Pope and the bishops of England from exercising any control over the masses of Englishmen without his sanction. The royal supremacy was asserted by Henry I in the Compromise (1107) which ended the quarrel over investiture with Anselm; by Henry II in the Constitutions of Clarendon (1164); by Edward I in the Circumspacte Agatis (1185); by Edward II in the Articuli Cleri (1316); and by Edward III in the Statutes of Provisors (1351) and Praemunire (1353).

In spite of the statutes, the Papacy continued to exercise patronage, to hear appeals in cases of marriage, succession, contract and will, and to levy annates or first fruits throughout the middle ages. Moreover, Pope Gregory VII demanded homage of William I, but was refused. Henry II had to accept Ireland at the hands of the Pope. John surrendered England to the Papal

Influence of the  
State over the  
Church

Church's claim  
on the State



legate and received it back as the vassal of the Pope. This created the idea of feudal relation between the English king and the Pope. But towards the end of the reign of Edward I, the Parliament at Lincoln (1301) definitely repudiated the claim of the Pope to overlordship. In 1399 Parliament declared that the Crown and the realm of England had been in all time past so free that neither Pope nor any other outside the realm had a right to meddle therewith.

The Church tried to stand apart from the State in its efforts to preserve its immunity from lay jurisdiction and lay taxation.

William I allowed the Church to have its own court, and the anarchy of Stephen's reign made the ecclesiastical courts powerful. The study of the Canon law also contributed to strengthen the feeling of independence of the clergy. The church court claimed to decide not only cases involving breaches of ecclesiastical law, but also offences committed by the clergy against the Common Law. Moreover, the bishops claimed jurisdiction over laymen for offences committed by them against the clergy. We have already explained how Henry II made an attempt to enforce the Common Law against criminous clerks. The murder of Becket created such a widespread indignation against the King that he had to agree in 1176 that no clerk should be tried by a lay court on a criminal charge or charge of trespass and that those who would be guilty of murdering a clergyman should forfeit inheritance as well as life. This concession practically recognised the right of what was called 'benefit of clergy'. The 'benefit of clergy' was claimed not only by the regular clergy but also by a host of persons in 'minor orders' living the ordinary layman's life. The minor orders were excluded from it by a law of 1488-89 in the reign of Henry VII.

The churchmen in the reign of Henry II claimed exemption from all tolls, purveyance and many other taxes. But Henry made the Bishops liable to send an account of their knights' fees for which their estates were liable. A serious conflict arose between the State and the Church in the reign of Edward I. Pope Boniface VIII issued a Bull forbidding the clergy to pay taxes to the secular authority. The English clergy, therefore, refused to pay the contribution which was imposed on them. Edward declared that those who would not contribute to the expenses of



government should not have the protection of government. The clergymen were virtually made outlaws by it. They, therefore, disregarded the Papal orders and agreed to pay.

The Church stood apart from the State not only in matters of justice and taxation, but also abandoned the great national assembly, Parliament. Soon after 1332 the lower clergy ceased to appear in Parliament. The bishops and abbots received summons as tenants-in-chief to attend Parliament, but by Edward III's reign 28 abbots had already secured definite exemption from the customary summons. Of the 27 abbots, who were summoned, a few attended. In 1513 it was declared by judges that the presence of abbots was not essential to Parliament. The Church, therefore, had done its best to abandon Parliament before Parliament surrendered the Church to the King in the reign of Henry VIII.

The conflict between the Church and the State, however, should not blind us to the services rendered by the great churchmen. "The State", says Dr. Stubbs, "gained immensely by being administered by statesmen whose first ideas of order were based on conscience and law rather than on brute force." The names of Bishop Roger of Salisbury and his family, to whom were due the organisation of the Exchequer under Henry I and of Becket as Chancellor, Hubert Walter as Justice and of Wolsey will always be remembered in the history of government of England.

### IX. Forms of land tenure

Under feudalism the King was the lord paramount, and there were intermediate lords called mesne lords, from whom the tenants held land. The tenure of those who held land directly and immediately from the king could be classified under three heads: *Knight service*, *serjeanty* and *frankalmoign*. All such tenants were known as tenants-in-chief, however small the estates held on these conditions might have been. Lands could be held from tenants-in-chief by others either on any of these three tenures or by *socage* and *villeinage*.

#### Knight Service

This was the commonest form of tenure in case of estates held directly from the king. The tenant received land on condition of service in the war and taking the oath of fealty. Usually an estate was granted in return for the service of five

Knights, or some multiple of five for the king's army. William the Conqueror made individual bargain with each tenant-in-chief regarding the number of knights to be supplied by each. There was, therefore, no fixed relation between the size of the estates and the number of knights to be supplied. A tenant-in-chief could subinfeudate or sub-let part of his land, but the responsibility of providing knights for the king's army remained with him. He might demand service from his own tenants or serve himself or pay scutage, when he was allowed to do so in the reign of Henry II. The feudal system entailed upon each tenant the obligation of *paying suit* in his lord's court. This meant that he was obliged to attend the lord's court when required and to give his help and advice in the settlement of legal disputes. This obligation was accompanied by the feudal *incidents*. The *incidents* were six in number : (1) An aid which was a payment granted to help the lord in his necessities. The Magna Carta laid down that the king must not raise an aid without the common consent of his Great Council except on three occasions, namely knighting his eldest son, marrying his eldest daughter for the first time, and ransoming the king. (ii) A *relief* was a tribute paid by a new tenant on succession to his predecessor. The Magna Carta fixed the relief in the case of a baron at £100 and in the case of a knight 100 shillings. Analogous to *relief* was *primer seisin* i.e. one year's profits from an heir on his succession. (iii) A *fine* was paid by a tenant to the lord on alienating the lands to a purchaser. (iv) An *escheat* or *forfeiture* was the reverting of the estate to the lord when there was a failure of heir or some violation of duty on the part of the vassal. (v) *Wardship* or guardianship of the knight's heir by the lord, when the heir happened to be a minor. (vi) *Marriage* or the right of the lord to give in marriage the minor daughter and heiress of the deceased knight to a man selected by the lord himself. The justification of *Wardship* and *Marriage* lay in the fact that a minor could not be expected to perform the military service, on condition of which the estate had been given.

The tenants by Serjeanty could not alienate their land, nor create a tenancy of any kind without the express permission of the lord. The officers of the royal household, forest officers, and artisans usually held land by Serjeanty. In course of time the Serjeanties were divided into *Grand Serjeanty* and *Petty*

*Serjeanty.* The former had to perform particular service, such as to bear his lord's sword in battle or to act as constable of his army. The tenants by Petty Serjeanty had to work as cook or falconer, or messenger. The tenants by Serjeanty had to bear the same feudal incidents as the knights but the Petty Serjeanty were not subject to wardship and marriage.

The term Frankalmoign means 'free alms'. Those who held land by this tenure had to pray for the soul of their overlord or administer to his spiritual needs.

Frankalmoign      Such tenures were held by religious persons or corporations and the tenants were subject to the jurisdiction of the ecclesiastical courts alone.

Free socage was a non-military tenure, held by some definite and determinate service *e.g.* by paying a fixed rent or ploughing the lord's land for a fixed number of days.

Free Socage      This class of tenants, too, was not subject to *wardship* and *marriage*. In the Domesday Book we find that the Socmen were holders of land lying in common fields, but in the fourteenth century they were large landowners whose holdings might be cultivated by their own tenants. The socagers were so called because they were bound to seek, follow and attend the court of their lord.

The term Villein sometimes alludes to the unfree status of a class of persons ; and sometimes it refers to a kind of tenure, according to which the tenant made payments in kind and performed labour in the lord's demesne.

Villeinage      In the twelfth and thirteenth centuries when the king's courts gave special protection to freemen, the distinction between Villeins and freemen holding in villeinage became important.

Each villein usually had the right to cultivate ten plots in each of the three fields. But he was not free to give all his time to the cultivation of these strips of land. He had to work for two or three days a week in the lord's demesne during the greater part of the year, and for four or five days a week in the summer time. He had to devote the whole day to his lord's field during the harvest. The villein by status was absolutely at the disposal of the lord. He could not be detached from his land, but he could not leave the land without his lord's permission and the lord could sell him along with his tenement. Unlike the chattel he belonged to the manor and formed part

of the freehold. The villein had to pay a fine for marrying his daughter, and a fine for selling a horse or an ox. He was however, protected by law from the forfeiture of his 'wainage' or instruments of labour, and from injury to life or limb. In the records of the Domesday Book we find that there were in England about 35000 freemen and socmen, 1,08,000 villeins, 88,000 bordars who had fewer strips of land than the villeins, and 25,000 slaves.

### X. The Manor and the decay of feudalism

In the Anglo-Saxon age the manor was probably a geographical unit, identical with the vill. But soon after the Conquest the vill was sometimes broken into several manors, the boundaries of which cut across each other. Economically a manor was an estate with the land round about it—the three large ploughed fields, the demesne, and often a large amount of uncultivated waste land. The chief characteristic of manor came to be its use as an unit for the exercise of jurisdiction. The steward or bailiff of the lord saw that the rules and customs of the manor were properly carried out. Within the manor lived, besides the lord, four classes of people, namely, the (i) freemen and sokemen, (ii) Villeins, (iii) *bordars* and *yottars* and (iv) slaves.

The business of making regulations, setting disputes and choosing officers was managed at the manor court, which was usually presided over by the lord's steward and attended by all the four classes of residents of the manor. The steward combined the functions of a land agent and a judge. The bailiff collected labour rents and sold the lord's produce in the market.

The manor as a judicial unit had two aspects. In the 'court baron' of the manor every freeholder was a judge and the freeholder got the judgment of his peers or equals. We have already described how at the end of Henry II's reign it had become possible for litigants to evade manorial jurisdiction by buying a royal writ, and getting the case transferred to the king's court. In the Court Customary of the manor, however, steward was the only judge and the villeins owed suit to it. Transfer of land held in villeinage was also effected in this court. It became the practice to enrol all these proceedings in the thirteenth century. Copies of the entires relating to their lands were given to the tenants. Because of this practice the

term tenant in villeinage gave way to 'tenant by copy of court roll' or simply 'Copyholder'. About the middle of the fifteenth century, the king's court began to protect the copyholder even against his lord.

The increasing use of money was slowly destroying the manorial system in the thirteenth century. The lords found it more profitable to take money rent of a penny or a half-penny instead of the day's work due. But the villeins who thus commuted their service for quit-rent did not necessarily become freemen in the eyes of law. They were, in many cases, still bound to the soil. The commutation was often made in a form revocable by the lord. It has been estimated that before the outbreak of the Black Death (1348) probably one-fourth of the peasantry had been gradually emancipated.

The Black Death carried away from one third to one-half of the population of England, the labourers and cultivators suffering most. The paucity of labourers raised the rural wages high. When labour became scarce the lords claimed the services of the villeins in place of money payments. The villeins who had never been able to commute their services, slacked or refused, because they found themselves unable to make use of any of the opportunities now offered for social betterment. They formed the nucleus of the 'Peasants' Revolt. At the same time Wyclif's "poor priests" travelled through the country declaring that it was the duty of every peasant and artisan to deprive unworthy men of their offices and lands. The resentment of workers against gentlemen found an echo in a popular rhyme, quoted by John Ball :

When Adam delved and Eve span who "was then a gentleman?" Exalted by this new order of ideas, the peasants determined to carry on the struggle for their freedom. The immediate cause of the revolt was the oppressive and inquisitorial tax of 1380—the third poll tax in four years. The peasants demanded the abolition of villeinage and services, and land to rent at a reasonable rate. They burnt many manor houses and especially the muniment rooms, where lay the evidence of the hated serfdom. The mills of the lords were destroyed and many of the lawyers, who supported the lords were hanged. The insurgents, headed by Wat Tyler, marched upon London,

where they plundered and slew as they thought fit. Riots broke out all over England. At last Richard II himself went out and promised the rebels the redress of their grievances. The king, however, did not keep up his promise.

"The records prove", observe Petit-Dutaillis and George Lefebvre, "that the events of 1381 caused no change in the condition of the peasant. Serfdom continued on the manors where it previously existed. The problem of wages remained as before, and the workmen of the towns, like those of the country complained of the same evils. The insurrection had only one appreciable result: it had let loose popular passions which retained their violence for many years". But in course of time the enclosures and the sheep-farming made it unnecessary for the lords to hold serfs. They evicted the serfs from their lands.

Decay of feudalism	<p>Serfdom, one of the essential features of feudalism, died out by the end of the sixteenth century.</p> <p>The serfs who still existed in the royal demesne in Elizabeth's reign were ordered to be set free by the queen.</p>
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The introduction of the scutage, the recruitment by *commissions of array*, by which local captains were allowed to collect men for the king's service at standard rates of pay and the *indenture* system, by which military leaders contracted for the supply of specified military service to the king diminished considerably the military importance of knight service. These circumstances gave rise to the "bastard feudalism" of the fifteenth century with its host of retainers under the banner of a lord. This new type of feudalism was destroyed by the increasing use of the gunpowder and the establishment of the 'New Monarchy'. With the decay of real feudalism, the feudal incidents were found irksome. James I proposed to commute

- knight-service into an annual fee-farm rent; but his proposal was not accepted. In the reign of Charles II the *incidents* were finally swept away.



## CHAPTER VI

### THE TUDOR PERIOD (1485—1603)

Henry VII—1485-1509

Henry VIII—1509-1547

Edward VI—1547-1553

Mary —1553-1558

Elizabeth —1558-1603

#### I. Causes of the increase in the power of the Crown

Outwardly, the Tudor period did not bring any violent change in the constitution of England. The nature of problems facing Henry VII was much the same as that which confronted the Yorkist rulers. The constitution appeared to be a "limited monarchy" both to Sir John Fortescue in 1469 and to Sir Thomas Smith in 1589. But remarkable change took place between 1485 and 1603 in the attitude of the people towards government, and especially towards the nature and function of monarchy.

The Tudors came to the throne in an age of transition when medieval feudalism was giving way before the modern state. Owing to temporary character of a number of circumstances, the Tudor monarchs were able to gather in their hands a large amount of power.

England had suffered much from the weakness of the executive authority in the Lancastrian period, when the big nobles got a free hand to do whatever they liked. The sufferings of the people culminated in the Wars of the Roses. The whole of England looked eagerly for a strong and vigorous government, which would give them peace and security. The Tudors were supported by the people in the task of building up a strong government. Moreover, the Renaissance and the Reformation directed the energy of the people to pursuits other than political.

The old nobility, the leaders of the baronial faction, had been cut off during the Wars of the Roses. Those who survived

the chaos were controlled by the Statute of Livery and Maintenance and punished through the Court of Star Chamber. In the Parliament of 1485, only 29 temporal lords attended, and of these 29 several were created by Henry VII. Henry VIII created a large number of nobles out of the property of the monasteries. But the newly created nobles, far from opposing the royal will, rivalled one another for receiving royal favour. Thus the Tudors were free from the rivalry of the nobility.

The invention of the gunpowder and the use of efficient artillery, which the king alone possessed, made the Tudors very powerful, and they could crush out any rebellion with ease.

One of the main causes of the weakness of the Lancastrian kings had been their poverty. Henry VII unscrupulously exacted money from his subjects and made the monarch independent of the support of the people. Henry VIII, in his turn accumulated vast sums by the dissolution of monasteries.

"In the interval between the premature efforts of Richard II", says Pollard "and the fall of his followers, the Stuart maxims of Roman Civil Law played a great part in English history, a part which, though dangerous to self-government, was essential to the establishment of the sovereignty of the State".

From the Roman Law the Tudors got notions of high sovereignty which was not to be restrained either by the Common Law or by the Canon Law.

The Privy Council and its judicial committees, like the Court of Star Chamber, the Court of High Commission, the Council of North and the Council of Wales "found in the Roman Law indispensable aids to the suppression of local anarchy."

The clergy, who had formerly mediated between the king and the people, now lost their moral and spiritual influence over the nation. At the beginning of the Tudor period, they clung to royal favour for preserving their power.

Last, though not the least of all, was the Reformation movement, which strengthened the Tudor kings. The Church which was a rival to the state throughout the middle ages was

reduced to the position of a department of the State in the Tudor age. "The loss of the Church's liberties increased those of the Crown and threatened those of the people." The Divine Right of the Church was transformed into the Divine Right of Kings.

## II. Character and Principle of Tudor 'despotism'

The Tudor monarchs established a popular despotism supported by the willing assent of the nation. They ruled over a war-like people and yet they had no standing army. They were attentive to the movement of public opinion and often yielded gracefully to public demands. They provided England with a strong government and performed many unlawful acts. But the public allowed them to do so, because the interests of the people and the monarch were identical in those days.

The Wars of the Roses had shown England what the weakness of the monarchy really meant. The nation was filled with one desire only, namely, peace. Peace could be assured by the keeping of good order, and order could be secured only by a strong King. Hence the nation was determined to support the Tudor monarchs. They kept the barons under strict control by means of the Statutes of Peace and order Livery and Maintenance and by the arbitrary Court of the Star Chamber.

In the 16th century France, Spain and Austria had become centralised state under strong monarchs. Foreign danger England was still a small state and it was a dangerous age for a small state. The religious quarrel of the time threatened England with the loss of her independence.

The Tudor Kings wanted to make England a sovereign State by cutting off all connection with the Pope. The English people too desired the greatness of England. Hence the Tudor monarchs truly interpreted the national will and made England a strong independent nation. It is no wonder that the people of England supported the Tudors in such a troublesome age.

The 16th century was an age of great economic advance. Agriculture was being improved and foreign commerce was developing rapidly. The Tudor kings encouraged trade, commerce and colonisation. The middle class people wanted peace and security in order to carry on their pursuits. The Tudors kept England out of war as much as possible and thus contributed to the national development of England.

The Tudors were despots, but they scrupulously observed the form of the constitution. They found it easier to do with the help of Parliament what they wanted and by the form of the constitution, than do away with Parliament. The king was given arbitrary power by Parliament, which twice cancelled the debts of the king and made his Proclamations valid as law in some cases. Parliament was the legislating, authorising and creative instrument. Prof. Pollard has shown that the Tudor Parliament was not merely a subservient one ; it opposed the monarch whenever he went against the will of the nation. The Tudors strengthened the position of Parliament by bringing the Church under its control. The Parliament obtained rest and recuperation "under the firm disciplinary administration of the Tudor monarch and emerged from it braced and invigorated for the struggle which lay before them in the 17th century." (Marriot).

The Tudors trained the local gentry of England by appointing from among them the Justices of the Peace for local administration. Thus we see that the Tudors, being entrusted with almost absolute power by the nation, used that power for the development of the nation. Marriot summarises the result of the Tudor rule in the following words : "Aristocratic turbulence was sternly repressed ; extraordinary tribunals were erected to deal with powerful offenders ; vagrancy was severely punished ; work was found for the unemployed ; trade was encouraged ; the navy was organised on a permanent footing ; scientific training in seamanship was provided ; excellent secondary schools were established. In a word, the nation became ready to use efficiently the liberties it has won."

### III. Relation between the Tudors and Parliament

The question of the relation of the Tudor with Parliament is a highly controversial one. Constitutional historians while all agreeing that the *form* of the constitution was maintained by the Tudors differ among themselves as to whether the *spirit* also was preserved by them. Historians like Stubbs, Hallam and Maitland are of opinion that the Tudors, being despots, packed the House of Commons, which showed a servile obedience to the monarch. While other historians like the Gniest and Pollard think that the Tudors were really constitutional rulers. They not only scrupulously adhered to the form and spirit of the constitution, but also advanced the powers and privileges of Parliament. A detailed discussion about the composition and functions of the House of Commons is, therefore, necessary.

The Tudor monarchs gave representation to new counties and borough. Henry VIII increased county representation from 74 to 90 and the borough representation from an uncertain number to 253. Edward VI added 30 : Mary 27 and Elizabeth 59

Creation of new Boroughs

borough members to Parliament. In all, during the Tudor period no fewer than 166 members were added to the House of Commons, raising its members, from 296 to 462. But it cannot be said that the Tudors created new boroughs only to influence the decision of Parliament. The sixteenth century was an age of rapid economic development and the House of Commons was acquiring power and prestige in that age. Many towns petitioned for representation and the popular Tudor monarch granted their prayer. Creation of boroughs in the royal Duchy of Cornwall might be attributed to corrupt motives of the Tudor monarchs : but no exception could be taken to the representation of counties of Wales, Chester and Monmouth and to borough like Westminster, Liverpool and Lancaster.

But there is no doubt that the House of Lords was rendered a pliable instrument in the hands of the Tudor monarchs. After the dissolution of the monasteries in 1540, the twenty-eight abbots who had been members of the House of Lords disappeared. The number of spiritual Lords fell to 26 in 1550, while the number of lay peers fluctuated round 50. Thus the spiritual peers became a minority in the House of lords. Most of the

The House of Lords

lay lords owned their position and fortune to the Tudor monarchs, and so did not dare to oppose the policy of the king

Stubbs holds that the Tudor Parliament was a packed body and remarks that "clearly the independent spirit (of Parliament) has nearly evaporated. The ecclesiastical bills pass without a protest. The Journals of Commons a record no opposition or protest ; the king servile body ? has his own way in everything." But Pollard thinks that the picture of the king "having his own way in everything" is imaginary. Parliament as the representative of the nation wanted to make England a sovereign State by throwing off the Papal yoke, hence it did not oppose the ecclesiastical bills. Parliament indeed granted to the king the right of making law by proclamations on certain subjects but this right was given to him only to put into practice the theory of the Act of Supremacy. But Henry VIII refrained from using the power. That Parliament often resisted the will of the king is proved by a letter of Secretary Petre written on the last day of the session of 1545. He writes that "the bill of books, *albeit* it was at the beginning earnestly set forward, is finally dashed in the Common House, *as are diverse others.*" The relations between the Tudors and Parliament can be more thoroughly understood by making an enquiry into the extent of power of Parliament in the sixteenth century.

#### IV. Relation of Elizabeth with Parliament

At first sight it would appear Elizabeth was a despot, caring little for Parliament. She freely exercised all the powers of the royal prerogative against which opposition was bitterest under the Stuarts. "She levied contributions like ship money ; she imposed new customs duties ; she exercised the powers of dispensing individuals from the operation of particular laws ; she imprisoned men with no more definite ground than the special command of the queen ; she issued many proclamations having the force of law." Yet Elizabeth was no despot. She had the approval of the nation behind her. She had no standing army to force unpopular measures on a discontented nation : and she had to depend upon the Justices of the Peace—the unpaid country gentlemen for almost all work.

The English nation was loyal and grateful to the queen. But it would be a gross mistake to suppose that Parliament was



subservient to her. Elizabeth did not like to deal with Parliament; she found it a meddlesome body and summoned it as seldom as she could. But she had to summon it thirteen times during her reign for granting her supplies. Parliament was so stingy in its grants that the queen had to run into debt and to sell crown lands on a large scale. This in itself is a proof that the control of Parliament over the revenues of the country was still real.

The four questions of most vital interest to Englishmen in Elizabeth's reign were religion, trade, succession to the throne and foreign policy. Elizabeth regarded these questions as reserved for the crown and would not allow Parliament to meddle in these. But Parliament insisted again and again on discussing her marriage, succession to the throne and criticising her church policy. Rarely a session passed without one or more members being sent to prison for discussing these topics. In 1593 she sent five members to prison for venturing to discuss the succession to the throne. This insistence on the part of the members of the House of Commons shows that they were striving to take a big part in the determination of the national destinies. This spirit was due in large measure to the Reformation, and to the increasing wealth of the country gentlemen and merchants.

Elizabeth used in a wholesale way the power of vetoing bills in the Parliament of 1598. She vetoed as many as 48 out of 91 bills. But she knew how and when to yield gracefully before the united demand of the nation. The Tudor monarchs used to grant monopolies or exclusive right to deal in certain commodities to individuals or corporations in consideration of money. The number of such grants was greatly increased during the last years of the reign of the queen, and the grievances of the people against them grew with the increasing prices which they caused. In 1601 the Commons vigorously protested against these and the queen gracefully recalled some of the most objectionable patents monopoly. When the Speaker of the House went to thank her she said "You give me thanks, but doubt not me I have more cause to thank you all than you me. And I charge you to thank them of the House of Commons from me, for had I not received a knowledge from you, I might have fallen into the lap of error for lack of true information.....Above all earthly treasure, I esteem my people's love, more than which I desire not to merit."

## V. Power of Parliament in the Tudor period

The Tudor monarchs dealt with Parliament with their characteristic tactfulness. They did not openly dispute the right of Parliament to control direct taxation. But they raised money by taking resourse to various subterfuges. Henry VII filled his exchequer by a careful distribution of fines and benevolences or pretended free gifts from rich men. Henry VIII twice repudiated his debt, but he did so with the sanction of Parliament. Wolsey demanded a large sum from Parliament in 1523 but obtained only a smaller sum. In 1525 he tried to raise an unparliamentary tax, but being threatened with a revolt of the people withdrew it. Elizabeth took forced loans but repaid the principal sum without paying any interest.

But the Tudors were less scrupulous in levying indirect taxes. The lawyers held that the monarch had a peculiar right of making impositions on imported goods for regulating trade. Statutes forbidding the monarch to raise taxes, without parliamentary sanction, on wool, sheep-skin, leather and tin and to levy tonnage (duty of so much per ton of wine imported) and poundage (duty of so much per cent on the value of imported dry goods) were narrowly construed. Mary levied impositions on foreign cloth and Elizabeth on sweet wines. Elizabeth used to grant monopolies to her favourites, but when the Commons protested against it she gracefully yielded to their demand.

Though the Tudors did not question the formal supremacy of Parliament in matters of legislation yet by means of veto power and by the use of royal prerogative of initiating bills in Parliament they exercised a good deal of legislative authority. But the letter of Secretary Petre shows that the Tudors could not always induce the House of Commons to do whatever they liked. In the reign of Edward VI, Protector Somerset failed to carry democratic agrarian legislation through the Houses.

The Tudor monarchs did not generally revoke or over-ride a statute passed by Parliament ; but they exercised a certain power of adding to the law of the land by issuing ordinances or proclamations from the Privy Council. By an Act of 1539

power was given to the King-in-Council to make proclamations which should have the force of statutes ; the punishment for disobedience might be fine or unlimited imprisonment but it was not to extend to life, limb or forfeiture. This statute was, however, repealed in the reign of Edward VI. Mary Tudor issued a proclamation threatening with summary execution all persons found to have heretical or seditious books in their possession. Elizabeth freely issued proclamations. She prohibited by proclamations the exportation of corn, money and various other commodities and restricted the importation of books and regulated their sale. She made stringent laws against the use of printing trade by an ordinance.

In the Tudor period the king was the head of the administration. Parliament could not control ministers of the Crown.

But the Tudors often sacrificed the minister, who became unpopular with the people.

Thus Henry VIII successively sacrificed Empson, Dudley, Wolsey and Cromwell. The Tudor monarchs had an instinctive knowledge of the feeling of the nation and in all their arbitrary action they respected that feeling.

## VI. Privileges of Parliament in the Tudor period

The Tudors dealt tactfully with the delicate question of parliamentary privileges.

Freedom of speech, the essential attribute of every free legislature may be regarded as inherent in the constitution of

Parliament. Strode, a member of the House of Commons, was imprisoned by the Stannery Courts for having introduced a Bill to regulate the privilege of the tin miners.

Strode was released by Writ of Privilege in 1512 and an Act was passed declaring in a general way that any proceedings against any member of the present Parliament or of any future Parliament for any speech in Parliament should be "utterly void and of none effect". Thirty years later in 1541 the Commons established the practice of claiming from the king the freedom of speech at the commencement of each Parliament. In 1529 Henry VIII wrote to the Pope that "The discussions in English

Parliament are free and unrestrained ; the Crown has no power to limit their debates or to control the votes of their members."

The Commons firmly established the privilege of freedom from arrest during this very period. By this privilege members of Parliament do not only claim that they are not to be arrested for words spoken in Parliament, but also claim a general immunity from the ordinary law. In 1543 George Ferrars, a member of Parliament was arrested as surety for the debt of another by process of the King's Bench. He was released by the Sergeant-at-Arms, acting under the authority of the House, which also committed to prison all those concerned in the arrest. The Commons had refused to secure the release of Ferrars by a Writ of Privilege offered them by the Lord Chancellor, but effected the release by the authority of the mace of the Speaker.

Thus the Commons established (1) their right to demand the delivery of a member and (2) their right to commit others to prison. Henry VIII helped these proceedings. He said that "We at no time stand so highly in our estate royal as in the time of Parliament, wherein as the head, you as members are conjoined and knit together as one body-politic, so as whatsoever offence or injury during the time is offered to the meanest member of the House is to be judged as done against our person and the whole court of Parliament."

In 1575 Smalley, a member's servant, who had been arrested for debt was set at liberty by the Sergeant of the House. There are several other instances under Elizabeth of privileged person being liberated by the Sergeant by warrant of the mace and not by Writ.

Elizabeth, however, did not allow the members to discuss questions relating to the settlement of religion and her marriage or succession to the throne. She punished Strickland for introducing bills for ecclesiastical reforms but she had to give way before the remonstrances of the House. But she punished Mr. Coke for the same reason and Peter Wentworth for demanding whether a member might not discuss points of grievances freely and without danger. Though the queen limited the sphere of parliamentary privileges, yet the Commons always protested against the

action of the queen. Elizabeth warned the Commons in the following words in 1593 :—"To your three demands the queen answereth, privilege of speech is granted by you must know what privilege you have ; not to speak every one what he listeth or what cometh in his brain to utter that ; but your privilege is aye or no ; to your persons all privilege is granted, with this exception that under colour of this privilege no man's ill doings or not performing of duties be covered and protected. The last, free access is granted to Her Majesty's person so that if he upon urgent and weighty causes and at times convenient or when Her Majesty may be at leisure from other important causes of the realm." Elizabeth thus strictly limited the sphere of privilege and dexterously evaded legal restraints without actually violating laws.

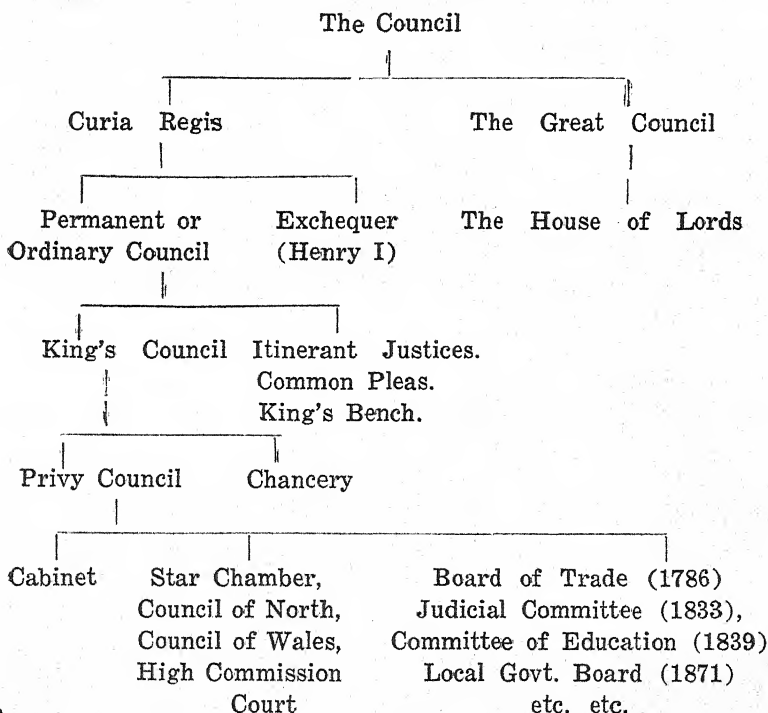
### VII. Growth of Parliament in the Tudor period

"During 120 years spanned by the Tudor dynasty", says Taswell-Langmed "the constitutional historian has scarcely any general progress of free principles, any important measure of improvement to record." But Prof. Pollard amply demonstrates that Parliament gained in power during the Tudor period. He says "Its (House of Commons) proceedings had never appeared on the rolls of Parliaments, but in or soon after 1547 (1) it began to keep *journals* of its own. (2) *The eldest sons of peers* thought it becoming to seek election : magnates bought up boroughs to provide themselves or their friends with seats, and were besieged with applications for their influence. Candidates began to pay, instead of being paid for election. (3) Boroughs which had let their representation fall into abeyance sought for its restoration, and those which had never had writs began to seek them. Parliament was providing a career, and in Elizabeth's reign we hear for the first time of some one being a "great parliament man", who was not a member of the Privy Council. The growth of the House of Commons was reflected in the expansion of its numbers, the increase of popular interest in elections and in the proceedings of the House and in the development of its privileges and powers."

It was the Parliament, which had brought extensive changes in the religion of the country. From this period onwards Parliament began to regulate church affairs. Parliament

set up courts and passed laws to accommodate Henry VIII in all his personal affairs of divorce and marriage and the desertion of objectionable wives. The exercise of these powers would be drawn as precedent in future. Moreover, there stands to the credit of Tudor Parliament a great mass of legislation on a wide variety of topics—social, commercial and ecclesiastical.

### VIII. The Privy Council



The Privy Council has been called the pivot of the Tudor constitution. The term Privy Council came into use during the reign of Henry VI. But its origin can be traced from the Permanent or Ordinary Council of the king, which again grew out of the Curia Regis. The Curia Regis in the Norman period acted as a judicial deliberative and administrative body. In the thirteenth



century the Courts of Common Law (Courts of Common Pleas and King's Bench) grew out of it. The word Curia came to be more and more definitely appropriated to a judicial body, and the judicial body became distinct from the administrative and deliberative body to which the king looked for advice and help in the daily task of government. Under Edward I, the Council became a definite body, but the relation of the King's Council to the Great Council of the realm still remained indefinite. The King legislated, imposed taxes and decided cases both in his Parliament and in his Council. But during the fourteenth century, the King's Council became definitely distinct from Parliament. In the Lancastrian period the function of the Council was to advise the king upon every exercise of royal power. In other words, the Council became the governing body. It was composed of lords and bishops and a few commoners. The Council was often nominated by Parliament. It served as a check on the king.

In the Tudor period the members of the Privy Council were no longer powerful enough to check the king, rather they became servile agents of him. Through out the middle ages the weakness of the government lay in the ineffectiveness of the executive which often failed to enforce the Acts passed by Parliament. The chief merit of the Tudors was that they made the Privy Council the most efficient instrument of government. The Tudors did not choose powerful barons as councillors. Under Henry VII the chief Privy Councillors were middle class clergy, such as Morton and Fox or lawyers like Empson and Dudley. After the Reformation the lawyer element continued, but the clergy became less prominent. There arose a new type of Privy Councillors in the reign of Elizabeth. These were men like Cecils, Walsinghams and Bacons who aspired to be numbered among the country gentlemen but were connected with the trading community. Unlike the barons they owed their position and influence to the crown and hence tried their best to strengthen the position of the monarch. The number of sworn councillors was limited to 15 or 20 only, each receiving £100 a year and free dinner.

Composition of  
the Privy  
Council in the  
Tudor period

In the modern age Parliament controls the Government through the cabinet members, but in the Tudor period the sovereign managed the Houses through the agency of the Privy Council, composed of devoted royal servants. The powers of the Privy Council were enlarged by affiliating the existing localised councils like the Councils of the North, of Wales, etc. The functions of the council were threefold ; (a) legislative (b) executive or administrative (c) and judicial. (a) Legislative programmes were discussed and drafted in the Privy Council in advance of Parliamentary sessions ; and care was taken to create favourable sentiment and to rush Government measures through Parliament as quickly as possible through the personal influence of the Privy Councillors who were members of the House of Commons or the House of Lords. Besides promoting statutes in Parliament, the Privy Councillors could issue Ordinances or Proclamations at the instance of the sovereign. The Statutes of Proclamations, 1539 gave the king's proclamations the force of law. (b) The Privy Council framed and directed the general policy of the state. It demanded grants of money from Parliament, kept a close supervision over all subordinate authorities, received ambassadors and guided foreign policy. Besides these its business extended over a most varied field, local government, industry and trade, Irish and colonial affairs. (c) The Privy Council acted also as a court of justice.

The multifarious judicial work of the Council was largely carried out with the help of a number of committees, dealing either with particular districts, like the Council of North, the Council of Wales, the Council of the West etc. or with a special class of courts like the Court of High Commission, for deciding, ecclesiastical cases, the Court of Requests for trying civil suits of poor suitors and the Admiralty Courts. The most important body to whom the judicial authority was delegated by the Council was Court of Star Chamber. "The origin of the Court of Star Chamber", observes Tanner, "is a constitutional problem of great difficulty and its history has been much misunderstood". The Long Parliament abolished the court of Star Chamber in 1641 on the ground that it owed its existence to an Act of Parliament of 1487 and that it had exceeded the

authority conferred on it by the Act. But modern historians are of opinion that the Court of Star Chamber did not derive its authority from the parliamentary statute. The Act of 1487 does not mention the name of the Star Chamber ; but simply conferred on the Chancellor, the Treasurer, and the Keeper of the Privy Seal, with the assistance of bishop and a temporal Lord of the Council, and the two Chief Justice, or two other justices in their absence, a jurisdiction to punish, without a jury, the misdemeanours of sheriffs and juries, as well as riots and unlawful assemblies. In the middle of the sixteenth and the beginning of the seventeenth century we find a Court of Star Chamber, which differed both in composition and in jurisdiction from the body created by the Act of 1487. The Court of Star Chamber had sometimes as many as twenty-five members and it seems that all the members of the Council sat in it. It did not confine itself to the cases mentioned in the Statute of Henry VII ; but tried all kinds of cases, excepting those in which sentence of death had to be passed. It tried cases of sedition, robbery, theft, libels and many other cases in which the Common Law had as yet no punishment. If it is agreed that the Star Chamber owed its origin to the Act of 1487, then it habitually exceeded the powers conferred on it by Parliament. But Maitland and Tanner are of opinion that the Star Chamber exercised a jurisdiction inherent in the King's Council ; which had supreme judicial power as the organ of the king's prerogative justice. It should be noted that the council had thrown off various judicial and administrative bodies from time to time but yet its supreme power was not diminished. The council may be compared to Brahma, the supreme God, who creates the universe out of himself, but does not exhaust Himself thereby.

The council had sat in the Starred Chamber ever since the reign of Edward III and had conducted there its judicial work. "The Act of 1487", says Maitland, "constituted a committee of the council to deal with certain crimes ; this, however, did not deprive the council itself of any jurisdiction that it had. This committee seems to have been in existence as late as 1529, for a statute of that year adds to the committee the Lord President of the Council, an officer recently created ; but before the end of Henry VIII's reign this statutory committee seems to disappear ; it is merged in the general body of the council." The

Star Chamber, in the Tudor age, was of undoubted utility as a means of bringing to justice great and powerful offenders who would otherwise have had it in their power to set the law at defiance. Coke spoke of it as the most honourable court (our Parliament excepted) that is in the 'Christian world'.

The Tudor monarchs preferred the Star Chamber to the Common Law Courts for several reasons. First, the unruly nobles used to intimidate the judges and jury in the Common Law Courts. But the court of Star Chamber was held in the council room, where no subject in the land could hope to overawe it. Secondly, the procedure of the court was entirely unregulated by law. The accused was summoned before the court and examined on oath. Torture which cannot be used in the ordinary courts to elicit confession was employed here for the extraction of evidence and confession. Thirdly, the judges of the prerogative courts were more subservient to the Crown than the judges of the Common Law courts. Moreover, no jury was used in the prerogative courts, the decisions of the judges being final. But it must be admitted that the Tudors did not use these courts tyrannically. They used it generally for maintaining order and punishing traitors.

The Tudor period has been rightly called the golden age of the council. It was less independent than it had sometimes been in the Lancastrian period, but it possessed an authority and power in administration, legislation and taxation never before equalled. It was employed as an agency of centralized control over economic life, the Church, justice and general administration. The council, through the Star Chamber and the court of High Commission exercised so much power that the Tudor government has been called 'government by council'. It has already been pointed out that the council issued proclamation which for the time being (1539-1547) had the same validity as law passed by Parliament. Parliament had little initiative in legislation till the closing years of Elizabeth. The council was highly efficient and its members were extremely painstaking. The troublesome period of religious and political change and economic transition required the vigilant, though sometimes, arbitrary action of the council.

## IX. Local Government in the Tudor Period

One of the greatest achievements of the Tudor period was the reorganisation of local government. During the Lancastrian period local government had become very inefficient. The ancient communal courts of the Shire and the Hundred as well as the Norman manorial courts had fallen into decay. The central government was unable to maintain law and order in the different localities mainly on account of lack of knowledge of local affairs and trusted officials. The Tudor sovereigns could have maintained a bureaucracy of expert officials, but they required a body of men to supply them with adequate local knowledge. So instead of sending the government officials to the different countries, they preferred to appoint the local gentry to carry out the local administration.

Formerly the sheriff had been the chief executive officer of the shire. He was deprived of the financial and judicial functions in course of the thirteenth and fourteenth centuries. His command over the local militia was handed over to the Lord Lieutenant by an Act of Mary Tudor. Thenceforward the Sheriff's functions were to keep prisoners in custody till the arrival of the Justice, to receive the Justices of Assize when they entered the country and to make arrangement for holding parliamentary election. The Lord Lieutenant was, like the old ealdorman, a local nobleman.

The judicial functions of the shire court were exercised by the justices of the Peace in the Tudor period. The office of the Justices of the Peace grew out of the post of the Conservators of the Peace created by Edward I. Justices of the Peace were appointed to hear and determine felonies and trespasses and to maintain order in the shire from the time of Edward III. In 1388 they were directed to hold their court four times a year. Tudor England was governed by the Privy Council through the Justices of the Peace. The Justices of the Peace were appointed by the Lord Chancellor on the recommendation of the Lord Lieutenants. They were selected usually from amongst the country gentry, having property qualification of £20 a year, though the Lord Chancellor could appoint a person without property qualification, if he was learned in law and found suitable otherwise. The office was honorary, though he could

receive certain allowance for discharging some of the duties. The Justice of the Peace was at once Judge, Magistrate, Superintendent of police, local board, and administrative-man-of-all-work. His primary function, however, was that of a Judge. In his own parish he sat alone and tried petty cases without a jury ; and four times a year he met the other Justices of the Peace of the whole country in Quarter Sessions. If a J. P. absented himself from the Quarter Session, the Clerk of the Peace reported his name to the higher authorities. The magisterial duties of the J. P. were to put down riots, to regulate wages, to issue licences, to supervise weights and measures, trade and industries, and to look after the paupers and apprentices. His police duties were to arrest offenders, to keep the peace of the shire, to prevent theft etc. He had to prevent people spreading false news or canvassing support for 'the Bishop of Rome.' He had even to see that the people attend the church service regularly. The Privy Council would frequently call upon the J. P. to watch the foreigners. This duty became very pressing when the Jesuits came to England and moved in disguise, trying to convert the people to Catholicism. The J. P. kept up roads, bridges and prisons and licensed ale-houses. It became their duty to license the beggars, to force the sturdy to work, and to repress the vagrants. They enforced the Poor Law. In short, the J. P. had to carry into effect that huge mass of social and economic legislation which characterised the Tudor rule. These multifarious duties were honestly and efficiently performed by the J. P. The training and discipline of the J. P. strengthened the habit of self-government in England, and made the country gentry fit for fighting the cause of liberty against the Stuarts.

It has already been pointed out that the township of the Anglo-Saxon age had passed into the hands of feudal barons and had ceased to be units of local government. The parish,

fostered by the Church and organised primarily for conducting Church business meanwhile came into existence. Gradually

The Parish

in course of the 13th and 14th centuries, it assumed some civil functions like the maintenance of the roads and bridges. The Tudors with their sure instinct for realities took the parish as the unit of administration. The general assembly of the residents of the parish became the local governing body and discharged civic as well as ecclesiastical



functions. This assembly is technically known as the Vestry. The parish assumed the greatest prominence as the unit for the management and relief of the poor. The Act of 1536 imposed a fine on the parish which failed to relieve its 'impotent' poor. The Act of 1547 laid upon the curate the obligation of exhorting his parishioners every Sunday in relieving the poor. Gradually the law advanced from mere appeal to compulsory payment.

The famous Poor Law of 1601 finally made the parish the area of administration of poor relief. The overseers, appointed and controlled by the Justices of Peace, were put in charge of poor relief work. Funds were raised by a weekly rate levied from the parish and these were applied for the benefit of three distinct categories, viz., (a) 'the lusty and able of body who were sent on work, (b) the 'impotent' poor were relieved and maintained and (c) the children were apprenticed to trades.

### X. Ecclesiastical Policy of Henry VIII

The English Reformation was primarily a political movement. Though the immediate cause of the movement in England lay in the 'divorce question' of the king, yet there were deeper reasons below the surface. English kings from the time of Henry II had tried to bring the Church under the control of the State. A systematic movement had been made in England from the time of Edward III to limit and if possible, to oust from England, the authority of the Pope.

The Church had been a rival to the Monarchy throughout the middle ages. Great Church leaders like Anselm, Hugh of Lincon and Thomas Becket had defied the power of the crown. So Henry VIII determined to make the Church a department of the State and systematically carried out the policy in the Reformation Parliament (1529-36).

Henry VIII first of all exacted a heavy fine from the clergy for their alleged offence in recognising Wolsey's claim to authority as the legate of the Pope. In 1531, while negotiation was still going on with the Pope, the King vigorously but cautiously renewed the attack upon the papal and ecclesiastical privileges. He prohibited *citations* to the court of the Archbishop and procured an Act of Parliament giving him the annates or first year's income, which the holder of every ecclesiastical post had formerly paid to the Pope.

Next, an Act was passed forbidding, under the penalty of *praemunire*, all appeals from the spiritual judges in England to the court of the *pontiff*. This measure facilitated the King's divorce and placed him in authority over the Church Courts. In the next session it was enacted that the appeals from the Archbishop's Courts should be made to the king in Chancery. Thus the king became supreme over the ecclesiastical court. No new law could be made in the Church convocation without the sanction of the king. The king ordered that in future no archbishop or bishop was to be presented to the Pope, but they were to be nominated by the king. The king passed another statute forbidding the payment of Peter's pence and other petty payments to the Pope. Henry VIII finally repudiated all authority of the Pope in England by securing from Parliament an Act of Supremacy in 1534.

By this Act the King assumed the title of the Supreme Head on earth of the Church of England with full power to visit, reform and correct all heresies, errors, and abuses.

In order to be free from all future trouble Henry suppressed first the smaller and then the larger monasteries which were strongholds of the authority of the Pope. He distributed most of the land of the monasteries among his favourites, and thus created a new nobility which was bound to support the king. As a result of this, the opposition disappeared from the House of Lords. Lay peers now for the first time constituted a majority in the House of Lords. Most of these lay peers owed their wealth and position to the king and so they supported him in all his activities.

Thus Henry VIII in liberating the English Church from the Pope, secured the royal supremacy in the State. The old nobility being curbed by Henry VII and the Church by Henry VIII, there was none in the State to question the authority of the king. But in this assertion of royal supremacy Henry VIII had the full support of the nation, which also wanted to make England a sovereign State by repudiating the papal authority.

The King turned to the Parliament as the source of final authority and sanction in his revolutionary recognition of the State. In it lay the foundation of future parliamentary control over papal authority.

## XI. Constitutional Results of the Reformation

The constitutional results of the Reformation in England was to complete the political subordination of the Church to the State, and to increase the power of the Crown. The repudiation of the external authority of the Pope in the sphere of religion strengthened the spirit of nationalism in England. The appointment of all church officials, the right of disposing of all cases finally within the country, the enforcement of discipline and doctrine ; in one word, the entire round of public affairs came under national control.

In the pre-Reformation era the archbishops, bishops and even the lower clergy frequently opposed the king, because they were not dependent on him. But after the Reformation the appointment, promotion and dismissal of the clergy were entirely in the king's hands and as such the clergy could not possibly go against him. The Church gradually came to be the staunchest supporter of monarchy. Henry VIII had forged an alliance between the Crown and Parliament against the Church ; but towards the close of Elizabeth's reign Parliament was beginning to give expression to democratic ideas of government in State and Church alike. The attitude of Parliament threatened the principle of personal rule common to monarchy and episcopacy ; and so the Church supported the monarch, and the monarch soon came to adhere to the principle of "No Bishop, no King."

The separation of the Church from Rome increased, in the first instance, the royal authority. Besides making all appointments in the Church, the monarch got control over the ecclesiastical courts. The fines imposed by these courts went to the king. The ecclesiastical taxes were appropriated by him. Moreover, the dissolution of monasteries placed vast resources at his disposal. Not only did the Reformation increase the monarch's financial power, but also enlarged his jurisdiction or scope of exercising his authority. The Act of Supremacy gave the king the authority to reform all ecclesiastical mischiefs. The State prescribed doctrines the people were to accept. In 1547 a book of Homilies, and in 1548 a new Communion Office were published and enforced by the authority of the king alone. The Crown established the Court of High Commission, a sort of ecclesiastical Star Chamber, to enforce its religious policy. The right of visitation and correction

which had so long been exercised by the Papal legates was exercised by Elizabeth through this court. She could also punish her political opponents through it by dubbing them as heretics. In short the Reformation vested the Crown with much of the power hitherto exercised by the Pope.

The Reformation also made some remarkable changes in the composition of the House of Lords. With the dissolution of monasteries, the abbots (the heads of monasteries) lost their seats in the House of Lords. Before the Reformation, the spiritual lords were as numerous as the temporal lords. But after the Reformation, only 26 bishops and archbishops continued to represent the spiritual Estate in Parliament.

The king-in-Parliament had effected the changes in religion. The important constitutional question as to whether the monarch alone or the Crown and Parliament should regulate church affairs did not arise till the closing years of the reign of Elizabeth. The queen did not allow the Commons to discuss matters of religion, which was considered by her as her special sphere. In the Stuart period, however, Parliament claimed to be consulted in all matters connected with religion on the ground that the church had been brought under the control of the state by the Acts of Parliament.

## XII. Creative Works of the Tudor Monarchs

It has rightly been pointed out by Marriott that but for the strong hand of despotism, carefully veiled under the forms of law, the English Parliament might have gone the way of the Estates General of France and the Cortes of Spain. Had the Tudors been weak and at the same time adherents of constitutionalism like the Lancastrians, English Parliamentary institutions might possibly have perished in the midst of social disorder and dynastic strife. On the other hand, had they been despots regardless of legal forms, Parliament would not have been able to fight the battle of freedom against the Stuarts. The Tudors maintained peace and order with a strong hand, suppressed the unruly baronial element and subordinated the Church to the State and at the same time adhered scrupulously to the outward ceremonial of constitutionalism. It was the peculiar combination of and the nice balance between despotism and constitutionalism which gave excellent training to the country for self-government. The destruction of liberties of the

magnates and of corporations nationalized liberty, and made it possible for ordinary citizens to enjoy it.

The greatest achievement of the Tudor age was the consolidation of parliamentary institutions. The Tudor monarchs sometimes found Parliament subservient and, therefore, used it gladly to carry out their purpose. This very subservience gave Parliament a great place in the State. Henry VIII was strong enough to ignore Parliament in matters of legislation and taxation and in introducing the Reformation; but he found it easier to raise the necessary taxes and to pass the requisite laws with the willing consent of Parliament. His successors also generally followed Parliamentary influence to be confirmed by a whole century of precedents. In the seventeenth century Parliament could claim that it had given sanction to almost all kinds of important decisions, and therefore, no step should be taken by the king without its consent. In the sixteenth century Parliament had, in the words of Prothero, "confirmed its position as an indispensable element in the State. Without the training, prestige, and the sense of self-importance conferred on it by a century of Tudor legislation, it could never have been styled by Pym, 'the soul of the body politic.'"

The House of Commons rose to relative importance in the Tudor age. The Tudors created a counterpoise to the baronage by raising the country gentry and the commercial classes into political importance. In the middle ages a Parliament used to sit at most for a week and the members did not find the opportunity to know one another, to organise themselves, nor to learn the business of the state. The Tudor Parliaments had considerably longer sessions and some Parliaments sat for years. So by the end of the sixteenth century the members of the House of Commons acquired a familiarity among themselves, secured a knowledge of parliamentary procedure, and picked up an acquaintance with national politics. The visible symbols of the importance of House of Commons were to be found in the recording of its proceedings in the "journal" and in the transference of the House of Commons from the Chapter House to St. Stephen's Chapel to the same roof as the Parliament Chamber.

Sir Thomas Smith testified to the rising importance of Parliament in 1589 in his 'Commonwealth of England', in the

following words. "The Parliament abrogeteth old laws, maketh new, giveth order for things past and for things hereafter to be followed, changeth rights and possessions of private men, legitimateth bastards, establisheth forms of religion, altereth weights and measures, giveth forms of succession to the Crown, defineth doubtful rights, appointeth subsidies tolls, taxes and impositions, and giveth most free pardons and absolutions".

The training of the country gentry in the ordinary business of administration as Justices of the Peace, the scientific attempt to relieve the distress of the poor, the creation of a strong navy, and the separation of the Church from foreign control are the great monuments of the creative genius of the Tudor monarchs. The religious policy of Elizabeth brought the greater part of the nation into the fold of the national Church and put an end to the danger of a war of religion within the country. Stubbs depicted the Tudors as despotic and absolute monarchs and held that the independent spirit of Parliament had nearly evaporated in the sixteenth century. But if we study the records of the period carefully, we shall find that the Tudor rule was not merely disciplinary but also educative. Henry VIII has been accused of invading the liberty of Parliament, but in fact he led a parliamentary invasion of the 'liberties' of the Church and of feudal baronage. "The House of Commons", writes Marriott, "emerged from the period neither crushed, nor emasculated, but braced, stimulated and invigorated, confident in its powers and eager to do battle for its privileges". But it has rightly been pointed out by a competent authority that the Tudors left the royal office far more powerful than they received it, and this very excess of power proved fatal to the Stuarts.





THE STUART PERIOD (1603—1714)



## CHAPTER VII

### THE STUART PERIOD (1603—1714)

James I—1603-1625

Charles I—1625-1649

The Commonwealth—1649-1660

Charles II—1660-1685

James II—1685-1688

William III and Mary—1689-1702

Anne—1702-1714

#### I. The Tudor despotism versus Stuart autocracy

As the strong centralised government created by Henry II was turned into an engine of tyranny by John, so the strong executive power built up by the vigorous rulers of the Tudor dynasty was sought to be transformed by the Stuart into an autocratic machinery. The early Stuarts took few steps which could not be supported by precedents from the Tudor age. The Stuarts did not call in question the right of Parliament to grant subsidies and to make statutes ; but like the Tudors they practically annulled the right by the exercise of prerogative powers of levying impositions and issuing proclamations. If James I prosecuted Bate and imposed additional customs duty, he could point out the similar action of the Tudor monarchs. Thus, by an act of 1534 Henry VIII was authorised 'to regulate by proclamation the course of trade, by repealing or subsequently reviving statutes passed by Parliament then sitting, touching the import or export of any merchandise.' Armed by this Parliamentary authority, Henry VIII, Mary and Elizabeth went on levying the 'Impositions' or additional customs duties. The Tudors levied forced loans and benevolences, granted monopolies in all kinds of articles to individuals and companies, and inflicted heavy fines through the Star Chamber. The Stuarts followed in the footsteps of their predecessors in taking these levies to replenish their treasury. The precedents for the Distrainment of Knighthood and the levy of Ship Money were also not wanting

in the Tudor age. The Stuart Parliaments often claimed the extensive use of proclamations by the kings in the seventeenth century. But in the sixteenth century, despite the repeal of the Statute of Proclamations of 1539 in the first year of Edward VI's reign, proclamations continued to be promulgated and enforced by fines, imprisonment and even labour on the galleys. Thus, a proclamation of Edward VI ordered the justices of the Peace to 'commit to the galley sowers and tellers abroad of vain and forged tales and lies.' Elizabeth banished the Anabaptists and the Irish from England by virtue of proclamation. It was again by proclamations that Edward VI's council regulated the price of provisions; Mary imposed duties on foreign cloth and French wines, and Elizabeth prohibited the exportation of corn and money and the building of houses within three miles of London. But it should be noted that such extensive use of proclamations did not go unchallenged in the latter half of the sixteenth century. Charles I sometimes imprisoned members for the speeches they delivered in Parliament; so did Elizabeth send to the Tower members of Parliament like Peter Wentworth and Cope. The wide interpretation of treason, the free application of martial law, and the intimidation of juries which gave verdicts adverse to the interests of the crown, placed individual liberty at mercy of the Tudor council. Elizabeth did not allow Parliament to discuss questions affecting religion, succession to the throne and her own marriage. In 1571 she prohibited the Commons from meddling with any matters of state except such as were propounded to them. Similarly, James I denied any right to Parliament to debate on (a) foreign policy, which came under the head of 'mysteries of state' (b) ecclesiastical policy which affected royal supremacy and (c) the action of ministers. Charles I ruled without Parliament for eleven years, but so did Wolsey in the reign of Henry VIII, and Elizabeth usually called Parliament once in five years. "The Tudors, then," observes Medley, "bequeathed to their successors a strong executive; and the uses to which the Stuarts put in were merely imitations of Tudor precedents. There was the same overriding of parliamentary legislation by proclamations and dispensations. For parliamentary grants were substituted loans and benevolences, monopolies, increased customs, obsolete royal and feudal rights." The question then arises, if the Stuarts were merely imitating the Tudors, why did a mighty struggle arise between the king and Parliament

in the seventeenth century? The answer in brief, lies in the growing popular conviction in the Stuart period that the constitutional weapons used by the Tudors for national purposes were now being used by the monarchs in their own interests against those of the nation. The cause of such a psychological change is to be found mainly in the change of situation.

England tolerated the despotic sway of the Tudors because the country had the need of strong government in the 16th century. When Henry VII ascended the throne, the country was torn by baronial factions. In the reign of Henry VIII the whole nation co-operated with the king in

Change in  
political  
situation

throwing off the authority of the Pope in England. England was beset with dangers at home and abroad in the first thirty years of Elizabeth's reign. So Parliament generally supported the Tudors. Moreover, the Tudors knew how to deal with Parliament. They were content with the substance of power, and did not boast of it in theory. Whenever they saw any general murmur of the people against any of their measures, they gave it up with tact and grace. Thus when there was an outcry against monopolies in the last years of Elizabeth, the queen revoked all the monopolies granted by her to the particular individuals. The Stuarts lacked such tact of pacifying the people.

With the accession of James I to the throne of England, new forces, which had been gathering strength towards the close of the last century, began to make themselves felt. Considerations for Elizabeth's age, sex and services to England had restrained the Commons from opposing her policy with vigour and persistence. But with the change of dynasty came a change of feeling of the people. During the Tudor period a new nobility of wealth, enriched by enclosures, by the new agricultural system and by the spoils of monasteries had arisen. Along with the country gentry, the merchants had acquired wealth by the development of trade with the East Indies and South America. Moreover, the squires had received an excellent political training in local government. A class of new Parliamentary leaders like Elliot, Hampden, Pym and Cromwell came from the rank of the squirearchy. At the close of the sixteenth century not only was Parliament ready to take upon itself fresh responsibilities in the sphere of self-govern-



ment, but was conscious of its readiness. The Stuarts "inherited from Elizabeth," observes a modern writer, "an efficient machinery for absolute government, and from their own family the disposition but not the experience to work it. They seemed temperamentally incapable of understanding how much the success of the Tudor government depended upon the careful manipulation of Parliament and public opinion."

## II. Ambiguity in the Constitution

The Stuarts came to the throne in a transitional and consequently critical period of English history. The country had no necessity of royal despotism after the Armada. The closing years of Elizabeth's reign had shown that the monarch could govern only so long as she was popular. The transition from the mediaeval to the modern world had not yet defined the respective spheres of the Crown and Parliament. The old balance between the nobility and the country gentlemen who had been trained in practical administration in the local field by the Tudors themselves had swung in favour of the latter. The powerful middle class were now eager to govern the realm of England. The early Stuart kings failed to notice that England was changing.

The failure of the Stuarts to realise the changed political, economic and social situation was as much due to their upbringing as to their incapacity to continue the policy of compromise between the sovereign and Parliament. James I came to England with a closed mind. Being an alien, the spirit of the British constitution remained a sealed book to him. Unfortunately in Scotland there was no counterpart to the wealthy middle class. His very pride, cowardice, and erudition were partially responsible for the struggle between the king and Parliament.

The scholarship of James I stood in the way of appreciating the vague claims of Parliament. Before becoming the king of England, he had proclaimed his political creed in *Trew Law of Free Monarchies*. He clung to those ideas even after 1603. The claim to rule by Divine Right, according to James I, was in perfect accord with the role of a constitutional ruler. To him fundamental law meant much more emphasis on the power

of the king than on the liberties of subjects. Unfortunately, neither James I, nor Charles I and James II were capable of pushing their notions of fundamental law on the firmest legal ground. The Parliament pressed for its claims with no other basis than ancient custom, but they fought with vigour and determination.

Thus the Stuart kings and their Parliament presented two different theories of government. Both sides made an appeal to past history to locate sovereignty. There was much ambiguity in the constitution. The verdict of the constitution on the respective claims was not clear in the beginning of the 17th century. The Lancastrian period was fundamentally an age of constitutional monarchy. But the succeeding Yorkist and Tudor periods were practically of royal absolutism.

Even in the beginning of the seventeenth century, the extent of the power of the Crown in matters of legislation was not certain. In the Middle Ages, both Royal ordinances and Parliamentary statutes had the legislative force. The Tudors issued proclamations frequently, though they took previous sanction of the Parliament. James I issued frequent Proclamations to forbid the increase of congestion in London. The Council issued these Proclamations and one of its committees, the court of Star Chamber enforced them as a legal tribunal. But the Stuart Parliament refused now to give legislative status to Proclamations. It drew its argument from the vaguely-understood convention that Royal ordinances related to temporary matters or to matters of specialised nature. The judges resolved in the case of Proclamations in 1610 that the king could not create any new offence by his proclamation. Earlier in Bates' case in 1606 A.D. the court of Exchequer had decided that, independent of Parliament, the king had no authority to levy customs duties by Proclamation. Despite the protests of the House of Commons and judicial decisions, Charles I continued to fix prices, demolish houses and direct all persons who had houses in the country to leave London. Thus though the legal death-warrant of the king's independent legislative power had been issued, yet the Stuarts provoked their parliaments by drawing upon the prescriptive right of issuing ordinances constantly.

Similarly vague were the jurisdiction of prerogative courts and that of the judges to decide cases arising out of conflicts of Prerogatives with statutes. One of the prerogative courts had been the Star chamber, which functioned in the reign of Edward IV as a court for criminal cases. Later on, in 1487 it had been assigned some specific matters. In the beginning of the seventeenth century, the Parliament admitted that the Star Chamber had been assigned only specific functions in 1487. On the other hand, the first two Stuart kings held that the Star Chamber had been given wider power including the entire domain of criminal jurisdiction. In 1613 James Whitelock was imprisoned by the Star Chamber because he had given legal advice to an opponent of the king. Charles I pushed the power of the Star Chamber to the furthest possible limit. Royal despotism was enforced by it during the period between 1629 and 1640. In matters of final authority on the validity of laws, Chief Justice Coke asserted that the judges should act as a Supreme Court. James I said that the judges may assess the legality of prerogatives and Parliamentary enactments, but the cases should be decided in favour of the Crown. Bacon, the Lord Chancellor, maintained that judges should be "lions under the throne." The divergent views of Coke and James I on independence of judiciary are best illustrated in Peacham's case and case of Commendams in 1615 and 1616.

### III. Other causes of conflict between King and Parliament

The extent to which ambiguities prevailed may also be shown by the demand for parliamentary privileges. Parliament assumed that the Crown could not diminish its privileges. It interpreted the Magna Charta, which was rescued from oblivion by Coke, in the light suited to its pretensions. Parliament held that nothing was legal unless it had been sanctioned by itself. Had this theory been true, Parliament itself would have been forced to give up much of its power, because it had grown more by precedent than by Statute.

The early Stuarts paid scant attention to the parliamentary privileges like free elections, freedom of speech and freedom from arrest during Parliamentary sessions, which had been

asked for in the form of Apology in 1604. In 1614, James I imprisoned Tomas Wentworth, Christopher Neville and Sir Watter Chutte for speeches delivered in the House of Commons. On a similar charge, Sir Edwin Sandys was imprisoned in 1631. He forbade the House to meddle with mysteries of the State and declared that the privileges of Parliament were derived from "the grace and permission of his ancestors". Charles I also imprisoned the Five Knights for speeches made in the Parliament.

Another cause of struggle was the revival of impeachments, which in the middle ages had been invented for putting a check on arbitrary government. In 1621 the House of Lords revived the right to try any person accused of crime by the House of Commons. Mompesson, the holder of a monopoly, and his colleague Mitchell were sentenced to heavy punishment by the House of Lords. Sir John Benet, a judge and Dr. Field, a bishop, were punished for corruption. Bacon was punished for acceptance of bribes. The right of parliament to bring charges of misconduct against a minister was further confirmed in 1624 by the impeachment of the earl of Middlesex. But while James I bowed to the Parliamentary engine of impeachment, his son Charles I did not recognise the rusty weapon. Charles I dismissed his parliaments rather than agree to impeach his favourite Buckingham.

Economic crisis at the beginning of the seventeenth century largely contributed to the enmity between king and Parliament in the seventeenth century. Prices swelled under two concurrent circumstances. The importation of silver from America increased the price of commodities in Europe and England alike. Elizabeth was wise enough to meet this crisis of the first magnitude by extreme frugality and reducing the weight of coins, so that money being in plenty, its value in relation to commodities fell. Over and above these the Stuart kings were extravagant in their expenditure. The ordinary peace time expenses of Elizabeth had been about £22,000 a year ; but under James I it rose to £500,000 in 1607. But Parliament did not take into account factors like fall in money values and the king had not enough to live on. According to custom, Parliament used to be called only when supplies had to be

granted for the emergencies of war or rebellion. But the Stuarts had to call Parliament frequently to ask for subsidies to meet ordinary expenditure. Parliament had many ecclesiastical grievances, and it refused to grant supply before these grievances were redressed. As the monarch was unwilling to concede to the demand for changes in religion, he had to take recourse to extra-parliamentary taxation by pressing his legal rights against individuals much further than Elizabeth had done. Such measures were made fresh grievances by Parliament and embittered its relation with the Crown still further.

The religious grievances rallied the opponents of Stuart absolutism. James I was greeted on his accession by the Puritans and Catholics alike. He displeased both by his decided views on religion. He thought that the Puritans like the Calvinists of Scotland, would settle their religious affairs themselves and in the long run quarrel with the monarch. Soon after the Hampton Court conference in 1604, James I raised the slogan "No Bishop, no King". The first Stuart king also declared that there would be no changes in the Elizabethan Church settlement. The Catholics, being disappointed by these royal utterances, took recourse to blow up James and his whole Parliament by Gunpowder in 1605. Charles I enraged his Parliaments by marrying the Catholic princess Henrietta and by his faith in Arminianism, which wanted a thorough reform in the Church and revision of the Elizabethan settlement. Unfortunately for Charles I, the lay Puritans and Parliamentarians began to think of Arminianism and Popery as convertible terms from 1629 onwards. Thus Puritanism, which in the reign of James I believed in the exclusive authority of the Bible and had no faith in the Anglican belief in Divine sanction for historic forms and traditions of the Church, became such a political force in the reign of Charles I that the history of Puritanism meant history of England. They presented an alternative political and religious programme much to the chagrin of the reigning monarch.

Religion influenced the foreign policy of England in the seventeenth century. The engagements of James I with Catholic Spain and the matrimonial alliance of Charles I with France appeared to their Parliaments to imperil Protestantism.

They, therefore claimed an influence on foreign policy, which had hitherto been denied to them.

In each of the above-mentioned political, ecclesiastical and economic spheres, the views of the early Stuart kings clashed with those of their Parliaments. Consequently a grievance, whether accepted or rejected by the kings, gave rise to other grievances. Thus began a vicious circle in that creative age when issues were not clear to either of the parties.

#### IV. James I's theory of government

James had enunciated the theory of Divine Right of kingship in his work "Threw Law of Free Monarchies," three years before his accession to the throne of England. His preconceived notion of Divine Right was strengthened by the circumstances under which he came to succeed Elizabeth. He was barred by the Act of Parliament which gave Henry VIII power to devise the Crown by will ; and Henry had provided that in the event of issue failing his three children (Edward, Mary and Elizabeth), the Crown should go to the descendant of his younger sister Mary, and not those of the elder sister Margaret, from whom James got his claim. Moreover, it could be argued that James being an alien was barred from succession to the throne. But Elizabeth in her days insisted on the succession of James to the throne after her death. James, therefore, quietly succeeded to the throne and he could say that his right to the throne was derived from a higher source than an Act of Parliament. He could logically claim that if he succeeded by Divine Right, he held his power from God, and therefore, to disobey him was to disobey the ordinance of God. "The state of monarchy is the supremest thing on earth," James declared in 1610, "for kings are not only God's lieutenants on earth, but even by God Himself they are called Gods."

\* The origin of the theory of Divine Right of kings may be traced to two sources, *viz.*, the Papal authority and the Roman Law. The Pope claimed to derive his power from God himself. When the Reformation brought the Church under the control of the kings, it was quite natural that the king should also claim divine authority. Secondly, the Roman Civil Law which was being studied in the Tudor period in England, attributed to the Roman emperors a power founded on divine institutions. The clergy

Origin of the theory



of the Anglican Church attributed divine authority to the king ; and so great a philosopher as Bacon upheld the same theory.

The theory of Divine Right of kings maintained (1) that the Supreme Being regarded hereditary monarchy as opposed to other form of government with peculiar favour ; (2) that no human power could deprive a legitimate prince of his rights ; (3) that the authority of such a prince was necessarily always despotic ; (4) that the laws by which in England and in other countries the prerogative was limited, were to be regarded merely as concessions which the sovereign had freely made and might at his pleasure resume ; (5) and that any treaty which a king might concede to his people was merely a declaration of his present intentions and not a contract of which the performance could be demanded. This theory was fully expounded by Sir Robert Filmer in his famous book "Patriarcha", written in the reign of Charles I but not published till after the Restoration of Charles II. Had this theory been allowed to be carried out in practice, the liberty of the English people would have been totally destroyed.

Closely associated with the theory of Divine Right was the doctrine of prerogative, which has been defined by Dicey as "the residue of discretionary or arbitrary authority, which at any given time is legally left in the hands of the Crown." By this doctrine the ultimate power in the state to deal with emergencies and exceptional situations belonged to the king in the Tudor period. James having succeeded to the prerogative of the Tudors, made it the permanent and indefeasible basis of royal sovereignty. He used it not only in emergencies or in matters not provided for by laws made in Parliament, but also in ordinary affairs. He went so far as to dismiss Chief Justice Coke for disputing his right to take a case out of the Common Law courts.

It should be noted here that though James did not push his theory of sovereignty to their logical conclusion, the destruction of Parliamentary system itself, there were others who were prepared to do so. Thus Dr. John Cowell, Professor of Civil Law in the University of Cambridge, published a sort of legal dictionary, called *the Interpretor*, in which he said that the

king "is above the law by his absolute power" and that Parliament cannot bind the Prince by the laws it makes.

### V. James I's relation with his Parliaments

James was determined to rule England according to the theory of Divine Right of kings, while the Parliament, under the stress of the king's activities, resolved that the king should be limited by the law.

The quarrel began in the first session of James' first Parliament (1604). The King's Court had disallowed the election to the House of Commons of an outlaw named Godwin on the ground that James in a proclamation had said that no outlaws were to be elected. The Commons declared that it was their privilege to settle disputed elections. The king answered that the "House of Commons derived all matters of privilege from him". The House of Commons drew up a Form of Apology in assertion of their privileges, claiming (1) that their privileges were of right and could not be denied by the King ; (2) that the Commons were the sole proper judges of election ; (3) that the persons elected were free from arrest or imprisonment and were privileged to speak freely and (4) that the King had no power to alter religion or make laws concerning it. Thus the Commons boldly challenged the theory of government held by James. James allowed the House of Commons to settle the matter of election.

Modern scholars like Gough and Keeton hold that there was much legal substance in the theories of Stuart Kings. Even Churchill in his History of the English speaking peoples (Vol. II) maintains that the Stuarts were probably right in their claim regarding prerogative power.

Two years later, financial difficulties led James to impose by an Act of prerogative, an extra duty of 5s. per hundred-weight on imported currants. A merchant named John Bates, by refusing to pay the extra duty, brought the question before the Court of Exchequer, and the Judges decided in favour of the King's right to do as he had done." The result of this decision was that the Government imposed extra duties upon a whole mass of other articles as well, and fixed the amount of these duties in a "Book of Rates." The Commons remonstrated against these impositions. They also complained of abuses in

the operation of the court of High Commission and of the misuse of Proclamations. James I dissolved his first Parliament in 1611.

Being disgusted with the opposition of the Parliament James was reluctant to call it again. But his financial necessities and the persuasion of his friends, who undertook to manage the opposition, led him to call his second Parliament in 1614. But his friends failed to influence the election and the Commons passed a vote against the King's right to impose taxes without the consent of Parliament.\* James demanded that supply should be the first matter treated of and on refusal dissolved Parliament.

During the next ten years (from 1611 to 1621) the king resorted to extra-legal means of raising revenue. Money was obtained by forced loans, monopolies, fines and the exaction of feudal payment and by a general benevolence.

James called his third Parliament in 1621. This Parliament is notable for three things : (1) The House of Commons revived the right of impeachment. Having impeached two knights, Mompesson and Mitchell for abuses of monopolies, it proceeded to attack Lord Bacon, the Lord Chancellor for receiving bribes. Bacon was condemned to the loss of office and a heavy fine. In the punishment of a high officer of the court who had been a faithful instrument of the king, a great forward step was taken by the Commons. (2) The Commons protested against monopolies. (3) They upheld the right of the members to freedom of speech, against the prohibition of James to meddle with the mysteries of the State.

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\* In course of the debate on imposition a Commoner named Whitlocke remarked : "where the Sovereign power is in this kingdom ; for there is the right of imposition." He argued that Sovereignty was vested ultimately in the King-in-Parliament.

Sir John Marriott in his "Crisis of English Liberty" (1930) \* makes the following interesting observation on the question of sovereignty :—"Hitherto Sovereignty had resided, beyond question or dispute, in the King. It may well be that the time had come to transfer it to the King-in-Parliament ; but those who advocated the change could not defend themselves, as Mr. Gardiner defends them on the plea of conservation. They demanded a change, which even if it did not actually necessitate an appeal to arms, was, nevertheless revolutionary, the Stuarts could have avoided revolution only by surrendering a position which on their own theory of government seemed to them vital."

In the fourth Parliament (1624) of James, Middlesex was  
 Fourth impeached and the king abolished the  
 Parliament monopolies.

Hallam summarises the constitutional results of James' reign in the following words: They (the Commons) had  
 Results of the obtained in this period but one legislative  
 reign measure of importance, the late Declaratory  
 Act against monopolies. But they had rescued  
 from disuse their ancient right of impeachment. They had  
 placed on record a protestation of their claim to debate all  
 matters of public concern. They had remonstrated against the  
 usurped prerogative of binding the subject by proclamation,  
 and of levying customs at the outports. They had secured  
 beyond controversy their exclusive privileges of determining con-  
 tested elections of their members. Of these advantages some  
 were evidently incomplete, and it would require the most vigorous  
 exertions of future Parliaments to realise them."

## VI. Constitutional struggle during the early years of the reign of Charles I (1625-1629)

It is said that James I sowed the wind and Charles I reaped the whirlwind. Charles I being brought up in high notions of royal prerogative of his father, held the theory of Divine Rights of kings as tenaciously as James had done. But Parliament had developed a new consciousness of power which brought fresh difficulties to Charles I. Charles was tactless and obstinate, so the quarrel with Parliament widened into the civil war.

Charles called his first Parliament in 1625 with the object of securing large subsidies to carry on war against Spain. The  
 Commons granted only a small sum and  
 His first Parlia- resolved to make future supply depend on  
 ment: Second redress of grievances. In indignation  
 Parliament: Charles dissolved it, but was forced to call a  
 The Five second Parliament within six months. This  
 knights' case Parliament proceeded to impeach Buckingham,  
 the favourite minister of Charles for miscarriage of the Spanish expedition. Charles retaliated by imprisoning Eliot and Digges but released them upon the refusal of the Commons to do any business until they were set at liberty. He began to collect money by various illegal means. Tonnage and Poundage were imposed and benevolences and forced loans were demanded. A

general loan was exacted by imprisonment, by the billeting of soldiers in private houses, and by the enforcement of martial law. Darnel and four other knights were imprisoned for refusing the loan. They sued out their writs of Habeas Corpus in the King's Bench, but they got the answer that they were detained by the command of the king. A discussion arose as to whether there was a legal cause of detention, and the judges gave the verdict in favour of the king. This decision, though warranted by precedents, was fatal to the liberty of subjects.

The third Parliament of Charles met in 1628 in a new spirit and under new leaders. The first work of the Parliament was the drawing up of the Petition of Right, to which Charles gave consent after much resistance in consideration of grants. The Petition of Right declared (1) that loans and taxes without the consent of Parliament were illegal; (2) that all arbitrary imprisonment without cause shown was illegal; (3) that billeting of soldiers in private houses was illegal and (4) that martial law was not legal. "The Petition was in truth the first step in the transfer of sovereignty from king to Parliament. The acts of which it complained were all prerogative acts, acts above the law, acts of sovereignty. These prerogatives were exercised by the king down to this time with no serious opposition. What Parliament insists upon is that now these acts must be transferred out of the sphere of that prerogative into the sphere of law, out of the sphere of that law which is above the king" (Adams).

If the first session of Charles' third Parliament took the first step towards the transfer of sovereignty from the Crown to Parliament, its second session took the first step towards revolution. Charles was in favour of Arminianism, while Parliament was Puritanic in religion and so could not tolerate the bishop. Moreover, a controversy arose as to whether the prohibition of taxation without the consent of Parliament was meant to cover the levying of customs and impositions. Charles resolved to dissolve Parliament, but before he could do so occurred the celebrated scene when, with the Speaker held down in the chair by force and the doors locked, Sir John Eliot's three resolutions were passed declaring that (1) all who would bring in innovations in religion or extend or introduce Popery or Arminianism. (2) all who should advise the levying of tonnage and poundage not being

A Revolutionary scene



granted by Parliament and (3) all who should pay tonnage and poundage, so levied, should be accounted capital enemies of the kingdom. Charles imprisoned Sir John Eliot and eight other leaders of the opposition.

## VII. The absolute government of Charles I (1629-1640)

Charles I had received so much opposition from Parliament during the first four years of his reign that he resolved in 1629 to rule England arbitrarily for eleven years. During this period he (a) raised money by various unconstitutional methods (b) punished those who refused to comply with his demands through the arbitrary courts and (c) tried to enforce on the people his ideas of church government and public worship.

The difficulty in ruling without Parliament was to secure enough money to carry on the administration. In order to cut down expenditure Charles made peace with France and Spain before the close of 1630. He adopted various illegal expedients to raise money. (1) He caused every freeholder having land of the value of a £20 a year to become knight and to pay fees for the honour or to be fined for refusing it; (2) enforced tonnage and poundage; (3) made strict inquisitions into titles to estates; (4) extended the boundaries of royal forests and levied fines for encroachments; (5) imposed exorbitant fines upon offenders, not so much by way of punishment as to enrich the Crown; (6) Monopolies had been declared illegal by an act of 1624, but Charles argued that the granting of monopolies to individuals and not to companies had been forbidden by that act. Accordingly he granted monopolies to various companies on their agreeing to make certain annual payments to him. By exercising the Crown's right to look after the estate of minors, Charles I received large profits. Yet with payment of such taxes, the land was peaceful. The country was prosperous. The Poor Law was well administered. The squires were happy to be masters of their estates. But the disciplined and exploited England rose from slumber on account of a new imposition. The imposition which roused the greatest indignation in the country was the levying of Ship-money. He revived the old custom of levying contributions from the maritime towns for the supply of ships in 1634. But in the following year he extended the



levy to inland towns as well. It was levied for the third time in 1636. Hampden having refused to pay an assessment of twenty shillings, proceedings were instituted against him in the Exchequer. Hampden appeared before the court but he demurred to the writ as insufficient in law. But the judges decided by a majority of seven to five that the king was legally entitled to levy the Ship-money. It is now known that the Ship-money was really used to serve to build a fleet of great ship to fight against the Dutch. But the levying of such a tax every year might make the Crown independent of Parliament. The judges lent support to the most absolute ideas of the royal prerogative and the nation realised that the judiciary was no longer the protector of the liberty of subjects. Hence the path was paved for the illegalities of the revolution.

The chief advisers of Charles in this period were Laud and Wentworth. William Laud was made Bishop of London in 1628 and was promoted to the Archbishopric of Canterbury in 1633. He was a learned and energetic man and sincerely tried to improve the condition of the Church. But he was narrow-minded and a bitter enemy of the Puritans. The Puritans, in spite of their opposition to the Anglican Church, had remained within the Church so long. But Laud determined to drive them out of the Church. He loved ceremonial worship. He changed the position of the communion table from the middle of the eastern part to the eastern corner of the Church. The Puritans suspected Laud to be a Catholic but in reality Laud hated Popery. He forced Englishmen to follow his religion by stamping out all opposition through the Courts of Star Chamber and High Commission. The common men did not like to see Bishops dominating the Council, the Star chamber and the Exchequer and interpreted Laud's political activities as attempts to dominate the state by the Church.

Sir Thomas Wentworth, later on known as the Earl of Strafford, was sent to govern Ireland. He was a strong man, who disliked half-hearted measures. He reduced Ireland thoroughly to order. He put down the Catholic religion in Ireland and tried to colonise Connaught. His stern system of government is known as "Thorough."

Charles was successful in subduing the Puritans in England. But when he made an attempt to introduce the English Prayer

Religious policy  
of Laud

Wentworth  
and his system  
called  
'Thorough'

Book in Scotland, he met with the determined opposition of the Scottish nation. The Scots drew up in 1633 a document called the National Covenant, by which they pledged themselves to resist the Prayer Book. Charles raised an army with great efforts to fight the Scots. But to his dismay he found that his soldiers would not fight against the Scots seriously. The war against the Scots is known as the Bishops' War because it was fought to maintain the position of the Bishops in Scotland. The results were significant. England saw that she as a united nation could successfully resist the absolutism of Charles I. No longer could the king manage to rule with a small revenue. He had to face national awakening which was becoming decisive in England.

Charles called back Strafford from Ireland to advise him. Strafford could not find out any other means of collecting money than calling the Parliament. Accordingly, Charles called a Parliament, known as the Short Parliament, which refused to make any grant before the grievances of the nation had been redressed. Charles dissolved the Parliament as he had not as yet given up the hope of ruling the country despotically. He called a meeting of the nobles only but the nobles asked him to consult Parliament about money matters. Charles then in despair, again led a small army to Scotland but the Scots in the meanwhile had invaded England. Now he had to make peace with them by promising a large sum of money. In order to raise this sum he had to call the Parliament, known in history as the Long Parliament, which became the second of the most memorable Parliaments in England.

### VIII. The Long Parliament

The Long Parliament, which was convened on November 3, 1640, was in temper and organisation different from Tudor Parliament.\* The number of members of the House of Commons was the same as in 1603, but the number of members of the second chamber increased because the lay lords increased from

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\* "It derived its force from a blending of political and religious ideas. It was upborne by the need of a growing society to base itself upon a wider foundation than Tudor paternal rule". (Churchill).

59 to 125, mainly because of new creations of James I and Charles I. A new machine was evolved by the system of holding conferences between the two Houses, and it was competent to examine subjects and work out policies without being dependent on the Government. The temper of the House of Commons was one of severe hostility to the king. The king had no other means of paying off the Scots than the grant of money from this hostile Parliament. This explains why the Long Parliament was so successful in getting whatever it wanted. The history of the Long Parliament might be divided into three periods, *viz.*, (1) the period of unanimity in reform (November 1640 to August 1641), (2) the period of Revolution (1641-42) and (3) the period of war with the king (1642-48).

The Long Parliament, in the first instance, released those who were victims of arbitrary government. Men like Leighton, Prynne, Burton and Bastwick had been degraded, fined, whipped, mutilated, and imprisoned for life for attacking the bishops and the king. They were released and given pecuniary compensation. The next task of the Parliament was to punish those who were responsible for giving evil counsel to the king. Strafford and Laud were impeached and sent to the Tower, while Secretary Windebank and Lord Keeper Finch fled beyond seas. Strafford was charged vaguely with treason, but as he had served the king faithfully, the charge could not be proved against him. Sir John Coke was sure that the Lords would acquit him on such a charge, because there was "no law extant whereupon to condemn him of treason." So the Commons dropped the impeachment and produced against him by Bill of Attainder, the favourite method of Tudors to punish an unpopular minister. No proof of guilt or formal verdict is necessary to pass a Bill of Attainder, which can be passed by the ordinary procedure of law-making, though it requires like all other bills the final assent of the king. The House of Commons passed the Bill by 204 to 59, but in the House of Lords the number present on the occasion was only 45 out of whom 26 voted for it. The king most reluctantly gave his consent to the bill by which his favourite minister was executed on May 12, 1641. Laud was executed in January, 1645.

Having punished the agents of tyranny, the Parliament proceeded to pass eight statutes with a view to preventing the

re-establishment of arbitrary government. (1) In order to prevent any farther attempt of the king to rule without Parliament, a Triennial Act was passed on February 15, 1641. The Act provided that a new Parliament must be summoned within three years after the last meeting of the previous Parliament. The new Parliament could not be prorogued or dissolved, or either House adjourned without its own consent, until it had sat for fifty days at least. If the king failed to summon Parliament, the Chancellor, the peers, the sheriffs and ultimately the electors themselves were successively empowered to hold the election. (2) By an Act of May 10, 1641 the Long Parliament provided that it "shall not be dissolved, prorogued or adjourned, unless it be by Act of Parliament to be passed for that purpose." (3) The Tonnage and Poundage Act of June 22, 1641, legalised impositions in the past but prohibited them for the future, thus setting the question in favour of Parliament. The Tonnage and Poundage was granted only for two months, and not for life as was the usual practice. (4) The prerogative courts like the Star Chamber, the courts of the North and of Wales, the special court of the Duchy of Lancaster, and the court of Exchequer, of the County Palatine of Chester were abolished by the Act of July 5, 1641. (5) On the same day the court of High Commission was abolished and the creation of similar courts in future was prohibited. (6) Ship money was declared illegal and the decision against Hampden annulled by an Act of August 7, 1641. (7) The boundaries of royal forests were reduced on the same date and (8) on August 10 the Distrainment of Knighthood was prohibited.

The Crown was finally deprived by these statutes of all the extraordinary powers which it had so long possessed. "The 'Eleven years' Tyranny' had shewn" writes Tanner, "that it was technically possible for the king, without any direct violation of the Tudor precedents, to dispense with Parliament altogether for long period of time. The history of the Courts of Star Chamber and High Commission had shewn that he possessed powers which enabled him to punish men for offences against the government as if these were offences against the law of the land. The history of Stuart finance had shewn that it was possible for

Effects of these measures

the king to extort large sums of money from his subjects without common consent given in a Parliamentary way. The Long Parliament had now succeeded in preventing him from obtaining any more money without common consent ; it had made it impossible for him to punish his opponents without the good will of juries ; and most important of all, it had succeeded in making itself indispensable in a State." "The responsibility of ministers to Parliament, the power of the purse in the House of Commons, the supremacy of the Common Law and of the regular courts of justice," says Montague, "had been asserted beyond the possibility of doubt or dispute."

So long as the agents and instruments of the Stuart absolutism were not destroyed, a degree of unanimity prevailed

amongst the members of Parliament. But  
The period of      when the Parliament set before itself the  
Revolution      task of constructing a new order in Church  
and state, a rift was traceable. The question of the Church  
settlement brought about the division first.

Religious      There was one important section of members  
differences      of the House of Commons which sought to  
abolish bishoprics and to erect in their place popularly elected  
assemblies after the Presbyterian model. These members  
wanted to change the Prayer Book radically, and if possible,  
to abolish it altogether. They came to be described as the  
"Root and Branch" party, because of their radical views.  
Opposed to them were the moderates who wanted to limit the  
power of the bishops and to make only a few alterations in the  
Prayer Book. Their views were put forward by Lord Digby  
in the following words : "Let us not destroy bishops, but make  
bishops such as they were in primitive times. Do their large  
territories, their large revenues offend ? Let them be re-  
trenched. The good Bishop of Hippo had but a narrow diocese.  
Do their courts and subordinates offend ? Let them be brought  
to govern as in primitive times—by assemblies of their clergy.  
Doth their intermeddling in secular affairs offend ? Exclude  
them from the capacity. It is no more than what reason and  
all antiquity hath interdicted them."

The ideas of the Extreme Party took concrete shape in a  
Bill of May, 1641, which provided that "(1) archbishops, bishops,  
deans, and chapters should be abolished, and all church prop-  
erty vested in trustees ; (2) that all ecclesiastical jurisdiction  
should be assigned to joint commissions of clergy and laity for



every shire, these county commissions being under the supervision of two central commissions for the Provinces of Canterbury and York ; and (3) that ordination should in future be by five divines acting under warrant from the Commissioners of the county in which the ordination was to take place." This Bill, however, was dropped after the second reading. Had Charles I accepted frankly the propositions of the moderate party, the Root and Branch party could not have gained strength. But he held aloof, and the people came to suspect that he would restore full powers to the bishops, in spite of any restrictions which the Long Parliament might impose.

The outbreak of the Irish rebellion in October, 1641, brought matters to a crisis. The king had been suspected as early as April, 1641 of plotting to bring a Catholic army to London to overawe the Parliament. The Parliament was severely hostile to the Catholics of Ireland and voted that Catholicism should no longer be tolerated in any part of the king's dominions, and that the land belonging to the Irish Catholics should be confiscated to provide funds for suppressing the rebellion. But the Extremists, led by Pym, feared that the king might use the army raised for the suppression of the rebellion against the Parliament itself. Pym, therefore, suggested that the king should "employ only such counsellors and ministers as shall be approved by the Parliament." This is the first suggestion for transferring the control of the executive to the Parliament for certain purposes. When this proposal was put to vote in the House of Commons on November 8, 1641, as many as 110 members voted against it, though it was supported and passed by the votes of 151 members. The minority belonged to the moderate party on the Church question, whereas the majority was in favour of Root and Branch reform in the Church. Thus the Irish rebellion not only widened the cleavage between the king and Parliament, but also precipitated the party division.

The division of the parties was more clearly demonstrated in the passing of the Grand Remonstrance. The Grand Remonstrance was printed and circulated in the country with a view to securing the support of the people to the views of the Extremists. It recounted all the evils from which the country had suffered, described the reforms made by the Long Parliament, indicated



the line of future reform and stated the Root and Branch policy with regard to the Church. It was plainly stated that supplies for the support of the king's own state could not be given unless such councillors, ambassadors and other ministers were in future employed as Parliament could give its confidence to. The Grand Remonstrance was passed by 159 votes to 148. Those who thought that Parliament was going too far, voted against it and gradually went over to the side of the king. Hyde and Falkland two prominent leaders of Parliament accepted high posts under the king. Those who sided with the king and favoured the Episcopal Church were called the Cavaliers or Royalists ; while those who gathered under the Parliamentary banner were known as the Roundheads.

The queen feared that she would be impeached. She, therefore, instigated the king to charge the Attorney

The Five  
Knights' Case

General, Lord Maudeville and five members of the House of Commons—Pym, Hampden, Holles, Haslerig and Strode—with high treason. The Lords, however, refused to arrest them. Thereupon the king sent the Serjeant-at-Arms to arrest the five knights, and when the House of Commons refused to surrender them, the king went personally with 400 armed men to arrest them. He found that the five knights had already fled away. The king was within his rights to accuse them of treason, but he certainly overstepped the legal limit of his power when he entered the House of Commons with armed followers to arrest them. He appealed to arms, and the arms henceforward decided the constitutional issue between the king and Parliament. Two other constitutional results followed from the attempted arrest of the Five Knights. The first was the change in the position of the Speaker of the House of Commons. The Speaker had so long considered himself as the agent of the king in managing the business of the House of Commons ; but when Charles I asked the Speaker, Lenthall, whether he had seen any of the Five Knights, the latter fell on his knees and replied, "May it please Your Majesty, I have neither eyes to see nor tongue to speak in this place but as this House is pleased to direct me, whose servant I am here." The second result was that the House of Lords, in which a majority had so long belonged to the king became hostile to him, because of his taking recourse to force. The House of

Lords passed the Bishops' Exclusion Bill, on the 5th February, 1641. The bishops had been the staunch supporters of the king, and their exclusion from the House of Lords deprived the king of the support of a large and influential section of the Upper Chamber.

The Irish Rebellion necessitated the raising of an army to suppress it. But the Long Parliament demanded in February, 1642 that the fortresses and militia should be entrusted to those in whom the two Houses had confidence, and drew up a list of persons to be nominated as lords-lieutenant in place of the existing incumbent who were nominees of the king. This was a direct and novel attempt to control the army by Parliament. Charles to this Ordinance the lords-lieutenant, appointed by Parliament, proceeded to promulgate the Militia Ordinance, on March 5, 1642 without caring to seek the assent of the king. According to this Ordinance the lords lieutenant, appointed by Parliament, were to lead and employ the militia of the counties. The king forbade the militia by a proclamation to act in obedience to the Militia Ordinance. Both the parties now found war inevitable and made preparations for it. The Parliament delivered on June 1, 1642, an ultimatum to the king by way of the Nineteen Propositions which demanded all branches of sovereignty for Parliament. The king was asked to surrender his right to appoint his councillors, officers and even the tutors of his children, as well as his power to control the army and navy, and to give a free hand to Parliament to settle the religious question. The king, of course, refused to consider these proposals and the Civil War soon afterwards began.

During the Civil War, serious differences arose between the Army and the Parliament over the questions of religion and finance. The majority of the members in Army *vs.* Parliament were Presbyterians while the army was composed of Independents. The Parliament, having got the control over the purse, was sometimes guilty of extravagance and corruption, while the army was poorly fed and irregularly paid. The army had reason to apprehend that the Parliament was trying to come to terms with the king. It forestalled the Parliament by seizing the king on June 3, 1647. In August 1647, the leaders of the army placed before the king the *Heads of the Proposals*, which

contained their plan for constitutional settlement. A Council of State was to be set up to assist the king in military affairs and in the direction of foreign policy ; but for the next ten years the Parliament was to appoint the officers of state and to control the militia. There was to be a redistribution of seats of Parliament to make it more representative in character, and religious toleration was to be conceded to every sect of Protestantism. The proposal was a reasonable one, because it made provision for curbing the power of both the king and of Parliament. But it was acceptable neither to the king, nor to the extremists amongst the army, known as the 'Levellers', who demanded the abolition of monarchy. Charles fled away to Scotland, and conspired with the Scots to fight against Parliament. The Army, again, seized the king at Carisbrooke in December, 1648. Now, Colonel Pride forcibly prevented 140 Presbyterian members of Parliament from taking their seats in the House of Commons because the Army feared that these members would not agree to punish Charles. This measure, known as "Pride's Purge" left power in the hands of the Independent minority in the Parliament, which set up a tribunal for trying the king in January, 1649. While the trial was going on, the council of officers produced a new scheme of government known as the *Agreement of the people*. This scheme omitted all reference to the king, proposed to set up an Executive Council, which was to take over certain "particulars" concerning the religious and political liberty of the subject from Parliament. The Parliament was to be reconstituted by the redistribution of seats and adoption of new qualifications for franchise. Royalists were to be disqualified from voting for seven years, and from sitting as members for fourteen years. The Parliament, however, was unwilling to give up the absolute sovereignty which had fallen to its hands. But the Parliament was now the mere 'tail or Rump' of some 125 members who in no sense could be said to have represented the country. The king was executed on January 30, 1649.

### IX. The Commonwealth (1649-1660)—an Era of Constitutional Experiments

From the execution of Charles I to the Restoration of Charles II, England remained free to shape a system of government, unhampered by past traditions. The House of Lords was

abolished by the Purged Parliament without a division on February 6, 1649 on the ground that it was "useless and dangerous." On the following day the Parliament declared that "the office of a king in this nation, and to have the power thereof in any single person, is unnecessary, burdensome, and dangerous to the liberty, safety, and public interest of the people of this nation, and therefore ought to be abolished." England was declared "a Commonwealth and Free State" on May 19, 1649.

The government was now carried on by the Rump and the 41 members of the Council of State, the latter forming only a Committee of the Rump. There were as many as 31 members of Parliament in the Council of State ; and as the Rump was usually attended by some 56 members, these 31 councillors could in theory secure a majority in it. But in practice the average attendance in the council was not more than 15, and there was hardly any unanimity amongst them. The Rump exercised legislative, executive and judicial functions and often interfered with the courts of law by means of committees. It exercised the sovereign power, though it contained only 125 members out of the 490 members of the Long Parliament. The members of the Rump often used their power in promoting their sons and relatives in the public service. They devised a scheme for perpetuating their power and wanted to disband the army. None of these two ideas were acceptable to Cromwell, who found himself the unofficial dictator of England after achieving victories in Scotland and Ireland. He dissolved the Rump by force in April, 1653. The civil power thus gave way to the naked sword ; but none outside a small group of partisans and doctrinaire republicans regretted Cromwell's action.

Cromwell then summoned on his own authority and entrusted the affairs of government to a body of 140 Puritan notables, who are known to history as "Barebone's Parliament". This Parliament was named after one of their members, Praise—God Barebone. Some of the members of the Congregation, like Harrison were determined that "the Saints shall take the kingdom and possess it." They judged the validity of their actions and laws from the standard of the pure law of Moses. They sought to disestablish the Church without providing for

the livelihood of the clergy. They alarmed the propertied men and the army by proclaiming the ideas of Levellers, threatening the rights of property and voting a small sum for administration. They abolished the Court of Chancery. Cromwell now realised that the Saints were a set of dangerous fools. The Army, with the consent of Cromwell, forced the members of the Parliament to Surrender their powers to Lord General Cromwell.

The next experiment was a new constitution drawn up by the leading officers of the army. This is the only attempt in English history to draw up a written constitution for the country. It is known as the Instrument of Government. According to its provisions, Cromwell was made the Protector.

He was to have the executive power and a fixed sum of money for the purposes of government. He was to be assisted by a council consisting of not less than 13 and not more than 21 members. Parliament, consisting of only one House was to meet every year and to be re-elected every three years. It was to have full legislative power, the Protector having the right to delay legislation for 20 days only. Though Parliament was a check on the authority of the Protector, yet he could veto any of its acts, which in his opinion, was contrary to the principles of the new constitution, and could dissolve it after it had sat for five months. The Instrument of Government made far-reaching changes in the composition of Parliament and in the qualifications for franchise. The qualification for county franchise was raised from forty shilling freehold to real or personal estate of £200 a year with a view to securing the election of middle class men, who were supporters of Cromwell. The number of borough members was reduced from 398 to 133 with a view to reducing the influence of the gentry who controlled many of the petty boroughs. Many boroughs were disfranchised, while the number of county representatives was raised from 90 to 265. The Protector-in-Council was empowered to nominate 30 members for Scotland and Ireland.

Whether the Instrument of Government set up a rigid or a flexible constitution is a controversial matter. The *Agreement of the People*, drawn up in 1647, but never put into execution, devised a rigid constitution, reserving fundamental provisions from Parliament. Dr. Gardiner holds that the framers of the Instrument of Government also intended to set

Nature of the  
Instrument of  
Government

up a rigid constitution permitting neither Parliament, nor the Protector, nor both combined to alter or amend the Constitution. But Ludlow, a contemporary of Cromwell, and Dicey, the greatest modern authority on the law of the Constitution, hold that the Protector and Parliament could, by their joint action, alter the constitution. Cromwell, however, wanted that the Parliament should merely exercise legislative, and not constitutional functions. When the Parliament proceeded to change the Instrument, he dissolved it.

The Parliament which met under the Instrument was remarkable because it contained members from Ireland and Scotland long before the Acts of Union were passed ; and because all sects of Protestants were given votes in Parliamentary election. It effected certain salutary changes in the procedure of the Court of Equity.

The first Protectorate Parliament met in 1654 and at once began to discuss the Instrument with a view to amending it. Thereupon, Cromwell summarily expelled 120 refractory members, and when the rest proved equally intractable, he took the earliest opportunity after five lunar months of the sitting of Parliament, to dissolve it in January, 1655.

The revival of insurrections with the country forced Cromwell to attempt to govern by a system of provincial prefects, known as the Major-Generals. It was Rule by Major-Generals in the highest degree unconstitutional. Now, Cromwell reduced the number and pay of the army and effected economies in other directions. Yet there was a heavy deficit. The deficit was mainly due to the war, and Parliament ought to have met it by granting additional subsidies. Cromwell, however, proposed to raise fresh revenue by imposing a 'Decimation tax' of 10% on all persons belonging to the wealthier classes. He had already imposed such a tax on the Royalists. There was so much opposition to this proposal that he had to call a new Parliament. The Major-Generals were asked to exclude candidates hostile to Cromwell, and in spite of their best efforts one hundred elected members had to be declared by the council disqualified and forcibly excluded from the Parliament which met in September 1656.



This purged Parliament drew up in 1657 a new scheme of government, known as the *Humble Petition and Advice*. This was an attempt to restore the traditional constitution of England.

The Humble Cromwell was offered the title and dignity  
Petition and of the king, but he showed real dignity and  
Advice faithfulness to the Puritan Revolution in  
refusing it. He received, however, the chief  
powers of the king, including the right to nominate his successor.

A second chamber, called the 'Other House', consisting of not less than 40 nor more than 70 life members nominated by the Protector was set up. Thus the constitution tended to revert to its normal features of Kingship and Parliament with two chambers. A fixed revenue was granted for the army and the navy and also for the support of the government. This was not to be altered nor any fresh taxation to be levied without the consent of Parliament. The Council of State consisting of 21 persons was to be nominated by the Protector with the consent of Parliament. The Protector gave up the right of excluding hostile members from Parliament.

In January 1656, the second Parliament of the Protectorate reassembled for its second session. The one hundred members who had been excluded were now allowed to take their seats. Cromwell promoted about 30 of his ablest supporters to the "Other House". This step, however, gave the Republicans a majority in the lower chamber. They launched an attack against the "Other House" and Cromwell in disgust dissolved his second Parliament in February 1658. Eight months later he passed away from the world.

Then followed a year of constitutional confusions. Richard Cromwell, who succeeded his father had no hold over the army and soon resigned. Then the army called  
Steps towards back the Rump, which wanted to curtail the  
Restoration powers of the army. So it was dissolved.

Political power now fell into the hands of generals. At last the nation became convinced that the only way to put a stop to the anarchy which prevailed was to restore the old royal dynasty and the old constitution. Early in 1660 members of the Long Parliament, who had been expelled in 1648 were re-instated and the Long Parliament voted its own dissolution after a

chequered career of 20 years. The Convention Parliament met and Restoration was peacefully effected.

## X. Cromwell as a Constitutional Ruler

Cromwell may be regarded as a temporary Dictator, set up to close an epoch of war and revolution. His rule was avowedly provisional in character. It had very little support of the traditional constitutionalism of England. It rested finally on the sword as in times of civil war and revolution all government must rest. He was not a self-seeking military tyrant but circumstances forced him to do things quite as arbitrarily as any Tudor or any Stuart monarch had done.

Cromwell's idea of government was based upon the dual control of Dictator and Parliament. He did not like a dictator without a Parliament, nor a Parliament without a fixed head of the Executive. The Cromwell's ideas of Government Parliament should make all laws, vote all supplies, but should not meddle with the Executive. In holding this ideal, he anticipated the constitution of the U. S. A. to a large extent. He was tolerant to men of all religions. He wished to maintain a regular clergy supported by tithes and not constrained to any rigid uniformity. He desired to see the nobility and gentry taking that part in public affairs which they had taken under the lawful kings of England. He was anxious to enforce the Common law making a few reasonable amendments. But to his regret, he found that the leader of a revolutionary party can never become a constitutional king. He was hated and despised by the Cavaliers as an upstart who had murdered the king. The Presbyterians hated him almost as bitterly because he had broken down their narrow domination. The Levellers, the Anabaptists and the Fifth Monarchy men despised him because he insisted on maintaining order. He did not get even the whole-hearted support of the men of his own party—the Independents, many of whom suspected him of designing to become a king. No constitution can flourish in such an atmosphere of hostility and suspicion. Cromwell had often to sacrifice his principles to the exigencies of time. The result was that he had to play the role of a despot in spite of his inherent dislike of it.

Cromwell expelled members of Parliament more unceremoniously than Charles had dared to do. Individual liberty and right of free speech were threatened to a greater degree under his rule than during the reign of Charles I. He raised revenue by ordinance as James I had done and went even further than him or his son in punishing those who refused to pay. In 1654, a merchant named Cony refused to pay customs duty on imported silk levied under Cromwell's Customs Ordinance. He was summoned before a committee of the Council and fined £500 and then committed to prison for refusing to pay the fine. The case ultimately came to be tried in the law court and when Cony's three lawyers argued that the Ordinance was invalid, the council committed all the three persons to prison till they retracted their argument.

Cromwell's rule left a permanent impression on the English constitution. He was the first statesman to show a limited degree of religious toleration. He banned open celebration of the Mass, prevented Catholics from being elected to Parliament, and turned Quackers to prison. But all these measures were taken to prevent civil disturbance. He was broad-minded enough to open the gates of England to the Jews. Nor was he seriously hostile to the Roman Catholics. He pursued a reformed scheme of representation in a united Parliament of England, Scotland and Ireland for the first time. Apart from its dictatorial character, the Protector's government was efficient, just, moderate and wise. His desire for ruling England constitutionally was shown by the calling of Parliament again and again, though every Parliament proved refractory. The truth is that the time was not propitious for constitutional government. Strange ideas of individual liberty were stirring the minds of the people. The divided state of the country required a strong government which was incompatible with constitutional government.

Prof. Adams has made a catalogue of the measures proposed or adopted during the Commonwealth period, but which have been enacted only recently e.g. free public schools, public post office, female suffrage, voting by ballot, a national bank, maintenance of a record of land transfers, simplification of marriage laws, great extension of the use of committees in parliamentary business, promulgation of an excise tax, reduction of delay and

costs in courts, a new secular court of probate, payment of fixed salaries to judges, reform of prison etc. Moreover, for the first time Cromwell laid the foundation of modern professionalized civil service. The bureaucrats were not appointed to serve political ends. They looked after the lands which had been confiscated from the Church and Crown, and began to play a role which is essential for responsible government.

### XI. Causes of failure of Constitutional experiment

The first and the foremost cause of the failure of the Constitutional experiments during this period was that the new Constitutions had no historical association. Led by his innate conservatism, Cromwell tried to reproduce the old constitution without the links of historical association which had bound several parts together. Such an attempt was bound to fail. The Instrument of Government set up an executive of Protector and a Council with Co-ordinate authority, and one-chamber Parliament independent of the Council and unable to alter the constitution. Thus was revived in an aggravated form the old quarrel between an obstructive Parliament and an active Council. The provision relating to membership of the Other House was denounced by the Commons on the ground that without being backed by property and birth the soldiers and councillors became members of a counterfeit House of Lords. Further, the Protector, under the scheme of the Humble Petition and Advice was not the historical monarch. The constitutional experiments conclusively proved that England was not willing to dispense with the framework of her constitution and that this type of governance could not endure without historical antecedents.

Cromwell himself had great doubts about his own measures. Churchill rightly observes that "thus there was ever a conflict in the man between his conviction of his divine right to rule for the good of the people and a genuine Christian humility at his own unworthiness." These parliaments, on the other hand, were more zealous in asserting their rights than in working out constitution. So neither the executive nor legislature had faith in the Constitution.

Other sections of the community also disliked the constitution. The Presbyterians did not support veiled despotism and

tolerant attitude towards religion. The Fifth Monarchists denounced heathenish monarchy and levellers criticised the preponderance of army and propertied class. The merchants were opposed to the constitutional experiments, because heavy taxation depressed trade.

Common men were dissatisfied with the Republican regime due to several causes. Social legislation was a failure. Poor Law was administered with harshness. The attitude of the governing class towards poverty was punishment rather than kindness which was adhered to even during the eleven years' tyranny of Charles I. The common people resented the official attitude to moral values. They were amazed to find that the government banned bear-bating, cock-fighting, athletic sports, horse-racing, wrestling and the innocent village dances on the occasion of the festival in the month of May. Gambling and swearing were punished. A man was fined for saying "God is my witness", another for speaking "Upon my life". Christmas became a gloomy holiday, when soldiers entered private house to seize cooked meat in all kitchens. But behind all these high talks of morality, the higher officials of the army were trying to amass fortunes. Generals and colonels like Fleetwood, Lambert, Pride, Hazeldrigg carved out rich landed estates from the Church and Crown lands.

In these circumstances when internal rivalries between the parliamentarians and the army, between Cromwell and his erstwhile supporters like Lambert, Ludlow and Harrison, and the hatred of the masses and merchants towards tyranny, it was inevitable that anger swelled and all classes of people except the army yearned for a settled government.

## XII. Constitutional Significance of the Restoration

The Restoration of 1660 politically restored the King, Parliament and Law in place of military dictatorship. It also restored Anglicanism, bishoprics and the Prayer Book instead of Puritanism in religious affairs. The nobles and the gentry were restored to their areas as local and national leaders. But each of these restored institutions underwent a process of transformation. A historian rightly observed "a restoration is always a revolution".

Gneist correctly estimates the status of restored monarchy as "royalist theory on the defensive". Absolute power of the king had gone to oblivion. There was the final break with feudalism when feudal tenures were abolished and substituted by an excise tax. The King agreed not to revive the criminal jurisdiction of the Privy Council, the Star Chamber and the Court of High Commission. Financially he had to remain contented what Parliament granted him as civil list amounting to £1,200,000 and not to levy extra-duties like tonnage or poundage. Charles I was determined not to quarrel with the Parliament, for he was not prepared to go on his travels again. But the restored monarch was not reduced to the position of a constitutional monarch. He still could proclaim the doctrine of Divine Right, as was done by James II. He could nominate his successor, choose his own ministers and conduct the foreign policy of England. Charles II, in spite of his sensuality and cynicism and the passing of the Exclusion Bill in 1681 by the Commons, transmitted the crown of a Protestant country to his Catholic successor James II. Fortunately for England, the views of the Parliament and Charles II coincided. Both of them wanted to eclipse the Dutch, and succeeded in wresting the carrying of trade of the world from Holland. That Charles II was still a force to reckon which can be proved with reference to his activities between 1681 and 1685. During these years he ruled without a parliament because of his dislike for the Exclusion Bill which was engineered by the Whigs. He succeeded in breaking the power of the Whigs by remodelling the charters of London and sixtyfive other provincial towns by writs of Quo Warranto. Consequently, the Tory sheriffs were elected in London. Charles II was now free to nominate Tory members from the above-mentioned constituencies. Thus the Whigs were driven alike from London and the countryside. Further, the king could still back his policies by a standing army, whose numbers increased year by year and by a fine navy to counteract the evil designs of foreign powers.

As a result of the Restoration, the Parliament, and particularly, the House of Commons emerged as a stronger factor than the monarchy. The Army was discarded in such a manner that never in future could it stage a come-back to English political



scene. The House of Lords never regained its lost prestige after the lapse of eleven years from 1649. The House of Commons became supreme. The king supplicated it for all extraordinary taxation. The royal court and the council had to beg and bow before it for salaries. Events after 1660 showed the enormous powers of the Commons. Parliament obtained greater control of finance and forced ministers to become responsible to it. Clarendon was impeached for accepting a bribe when Charles II sold Dunkirk to the French for £ 400,000 in 1667. Two years later another minister, the Earl of Danby was impeached on the foul charge of asking for brides from the French king Louis XIV. This time the pardon from the king did not stop the proceeding of the trial against the minister. A more effective means of maintaining parliamentary control over executive was secured by the appointment of a parliamentary committee to audit the accounts of the treasury in 1667.

Thus evolved at the Restoration a new conception of sovereignty. The king could exercise his sovereignty only with partnership of the parliament. Charles II surrendered the right of determining the national policy by his passive attitude to the doctrines of prerogative power or defending the actions of his ministers. Parliament became supreme not only over the monarch but also over the lawyers who had earlier pleaded for judges as the arbiter of the Constitution. "Coke's claim that the fundamental law of custom and tradition could not be overborne, even by Crown and Parliament together, and his dream of judges in a Supreme Court of Common Law declaring what was or what was not legal had been extinguished in England for ever" (Churchill).

Not less significant was the position of the national Church restored in 1660. Religion was not the main cause of the Restoration. The leaders of the Restoration were satisfied with the victory over Puritanism.

Now the monarch was not all concerned with the need for a National Church, based on the Prayer Book and Episcopacy, as had been done by successive sovereigns like Elizabeth and Charles I. The parliamentarians and the people alike were interested more in philosophy and party politics than in theology. Clarendon tried in vain for a union in Church

and State. But the "Clarendon code" destroyed all chances of unity and a single Church for all citizens. The Corporation Act of 1661 by requiring all persons holding municipal office to renounce the Solemn League and Covenant, acceptance of the oath of non-resistance and asking citizens to receive the Sacrament according to the Church of England drove away the Presbyterians, Republicans, Catholics and Nonconformists from the Anglican Church. About one-fifth of the clergies refused to give unqualified approval of the Prayer Book, which was enacted by the Act of Uniformity of 1662. These dissenting clergies were prevented from preaching not only in their localities but also within five miles of any city, corporate town, borough, parish or their place of residence according to the Conventicle Act of 1664 and Five-Mile Act of 1665 respectively. Thus England was divided in religious sphere. The Royalists and Anglicans now gained ascendancy in national politics. The vast majority of Dissenters gathered themselves in areas like Birmingham and Midlands, which were far beyond London and the adjacent cities of South England. The villages of North England nursed the families of Quakers and Baptists. The attitude of the Cavalier Parliament (1661-1679) amply demonstrates the zeal of the Anglicans. When the king suspending the Act of Uniformity tried to relieve Dissenters from the laws requiring assent of the Prayer Book, the Commons vehemently opposed his action. The Anglican Commons refused to enact the king's proposal for Declaration of Indulgence in 1672 and resolved that "Penal statutes in matters ecclesiastical cannot be suspended but by Act of Parliament." Subsequently, Charles II had to agree to the Test Act in 1673 by which no one was to hold any official post who refused to take the sacrament according to the Church of England. The Parliamentary Test Act of 1678 excluded Catholics from Parliament.

• The results of these parliamentary enactments on religion were mainly twofold. First, the Church became subordinate to the State. Secondly, England became an island of various religions. In the social sphere religion did not matter much. It seemed that the days of religious fanaticism were over. But religion was restored in the wake of the Exclusion Bill by lay politicians for political ends. The upper class and gentlemen of England who were socially united by allegiance to

Anglicanism, were divided politically into Whigs and Tories. The Abhorrrers or Tories wanted to make the Anglican Church as the National Church and to root out Dissenters, and they were supporters of the king. The Petitioners or Whigs, because of their alliance with industrial and commercial classes, advocated the new doctrine of Toleration. The Restoration epoch closes with the emergence of party system in the political life of England.

Some historians regard the Restoration as the beginning of Parliamentary and responsible government. The impeachments of Clarendon and Danby were intended to remind the ministers of the Crown of their responsibility to Parliament. Though the weapon for teaching the lesson of ministerial responsibility was a crude one, yet the tendency towards individual responsibility as one of the fundamental principles of modern Cabinet System was clearly noticeable. Notion of collective responsibility had not yet dawned upon the Restoration of political wisdom. Closely connected with the problem of responsible government was the scheme of Sir William Temple towards the making of something like a cabinet government. He suggested that a Council of thirty, half of whom were to be officials and the other half of parliamentarians should function as an executive body, leaving Parliament supreme in legislation. The scheme failed because neither the king nor the Commons had faith in it. Charles said "they have put a set of men about me, but they shall know nothing". The members of the Parliament suspected the "old leaven" in it. It was too premature to expect the restored king to become a constitutional monarch trusting his ministers and ready to sign even the death-warrant presented by Parliament.

### XIII. Constitutional Progress made during the reign of Charles II

A Statute of 1660 abolished feudal dues from wardship and knight service, and purveyance. In commutation of the incidents of military tenure, the Crown was granted a fixed and hereditary revenue to be levied by an excise on beer etc. This statute was the last important step in the abolition of the feudal land law in England.

The right of appropriating supplies was secured by Parliament in 1665 ; but it was not carried into full effect till after the Revolution. The right of auditing public accounts was secured by Parliament in 1667.

Parliamentary Control over Taxation

Individual liberty was firmly established by the Habeas Corpus Act of 1679. The object of this famous statute was to prevent illegal and indefinite imprisonment. It provided that a person committed for any crime except treason or felony could demand from one of the judges even in vacation time a Writ of Habeas Corpus directing the jailor to speedily produce the body of the prisoner in court and certify the cause of his imprisonment. If bailable, he was to be discharged within two days on giving security. Jailors failing to produce their prisoners or judges refusing the Writ, were liable to heavy fine. A prisoner committed for treason or felony must be tried at the next Assize or bailed unless the Crown witnesses were unavoidably absent. In that case he was either to be tried at the second Assize or discharged. This Act effectively checked the worst abuses of the earlier period *viz.*, the practice of administrative imprisonment.

The Habeas Corpus Act

During the reign of Charles II the Commons successfully asserted their claim to control the policy of the ministers by punishing them for adopting measures which Parliament considered as contrary to the interest of the nation. Clarendon was impeached for high treason as he was held responsible for the fall of Dunkirk. Again Danby, the Lord Treasurer was impeached for high treason for taking part in a discreditable negotiation with Louis XIV of France under the express orders of Charles himself. Danby alleged the command of the king for what he had done, but the Commons ignored this plea, thus asserting the responsibility of ministers to Parliament. Danby then showed a royal pardon but the Commons resolved that such a pardon "could not bar an impeachment."

Ministerial responsibility

The rise of definite Parliamentary Parties in this reign was another source of Parliamentary strength. It

was in the year 1679, during the intense public agitation caused by the introduction of a Bill to exclude the Duke of York, brother of the king from succession on the ground of his professed Romanism that the name Whigs and Tories were first applied to the two great political parties. To defeat the Exclusion Bill, Charles II dissolved the Parliament. Many persons sent petitions for convening a meeting of Parliament. The petitioners favouring the exclusion of James were known as the Whigs. Those who expressed their abhorrence at the attempt to coerce the king were known as the Tories.

#### XIV. Causes of the Glorious Revolution of 1688

The Revolution of 1688 was the outcome of a series of measures by which James II gradually convinced all parties that he determined to make himself absolute and to restore the Roman Catholic Church by means of his suspending and dispensing power to override the law, and by a standing army to overawe opposition.

- (1) Soon after his accession he issued a proclamation ordering the payment of the customs duties though this had not been granted to him by the Parliament.
- Illegal measures of James II (2) He removed from the Bench all the judges of independent spirit. Then he secured a judgement in favour of his dispensing power in a collusive case brought against Sir Edward Hales, a Roman Catholic, who held a commission in the army, for violation of the Test Act. Hales pleaded a dispensation of the King and the subservient judges decided that it was an inseparable prerogative of the crown to dispense with penal laws in particular cases. Being strengthened by this decision the King employed Roman Catholics in service. (3) He created an arbitrary court of commissioners for ecclesiastical cases in defiance of the Act of Long Parliament. (4) This court expelled the fellows of Magdalen College, Oxford for refusing to elect a supposed Catholic as President. James also removed the Vice-Chancellor of Cambridge for refusing to grant a degree to a Catholic monk. Thus James brought on him the resentment of the universities which had so long been the stronghold of the Royalist party. (5) In 1687 he issued a Declaration for Liberty of Conscience to favour the Roman Catholics.

In 1688 he reissued the Declaration of Indulgence with orders, that it should be read in all churches. Seven bishops petitioned against this order. James II ordered for their prosecution on a charge of seditious libel. But they were acquitted by the jury. (6) He had also tampered with the freedom of election of Parliament and had attempted to nominate the members.

All the parties in England saw that James II was going to follow the despotic policy of James I and Charles I. Love for the English Church and for the Protestants mainly, love of freedom united them to invite William of Orange. James fled from England and a Convention Parliament elected William and Mary as king and queen of England.

## XVI. The Revolution Settlement and Constitutional Significance of the reign of William III

The Revolution Settlement was a compromise between the views held by the Tories and those held by the Whigs ; and hence it was moderate in character. The Whigs claimed that James II by his flight had forfeited the crown ; but the Tories were reluctant to admit it. So it was decided to declare that James II had abdicated the throne of England by his flight. The throne was bestowed by Parliament on Mary and William of Orange and therefore the crown became an office in the gift of Parliament. But no formal attempt was made to deprive the monarch of his executive authority or of his legitimate prerogative power. Indirectly, however, by the (1) Bill of Rights (2) fixing the Civil List (3) Mutiny Act (4) Triennial Act (5) Toleration Act (6) Non-renewal of the Licensing Act (7) Act of Settlement and (8) the growing Cabinet System, the executive was made wholly responsible to Parliament and the liberty of the subjects was secured.

The Convention which met soon after the flight of James II passed a Declaration of Rights, reciting the fact of his abdication, and condemning as unlawful the principal acts by which he had offended the nation. The Convention then offered the crown to William and Mary who accepted it. In January 1689

The Bill of  
Rights



the Convention was turned into a Parliament, which converted the Declaration of Right into a Bill of Rights. The chief provisions of the Bill of Rights might be divided under four heads—(1) those removing legislative abuses ; (2) those removing judicial abuses ; (3) those securing privileges of Parliament and (4) those securing the liberty of the subjects. Under the first heading were the following :—(1) that the pretended power of suspending of laws or the execution of laws by regal authority, without consent of Parliament, is illegal. (2) That the pretended power of dispensing with laws or the execution of laws by regal authority, as it had been assumed and exercised of late, is illegal. (3) That levying money for or to the use of the crown, by pretence of prerogative, without grant of Parliament, for longer time or in other manner than the same is or shall be granted is illegal. The following provisions aimed at removing judicial abuses :—(4) That the commission for creating the late Court of Commissioners for ecclesiastical causes, and all other commissions and court of like nature are illegal and pernicious. (5) That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. (6) That jurors ought to be duly empanelled, and returned, jurors who pass upon men on trials for high treason ought to be freeholders. (7) That all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void. The following provisions secured the privileges of Parliament :—(8) That the election of members of Parliament ought to be free. (9) That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament. (10) That for redress of all grievances, and for the amending, strengthening and preserving of the laws, Parliament ought to be held frequently. The following provisions secured the liberty of the subjects :—(11) That it is the right of the subjects to petition to the king and all commitments and prosecutions for such petitioning are illegal. (12) That the raising or keeping of a standing army within the kingdom in time of peace, unless it be with consent of Parliament, is against the law, (13) that the subjects who are Protestants may have arms for their defence, suitable to their conditions, and as allowed by law.

After passing the Bill of Rights, Parliament took effective steps to prevent future illegalities. It voted a fixed grant to the crown for the 'Civil List', that is, for the Parliamentary ordinary expenses of civil government. Parliamentary supremacy Particular taxes were assigned for particular purposes, so the crown had henceforth no large general revenue which it could use as it thought fit. Parliament granted money for maintaining an army every year; so by this means annual Parliament has become a necessity. A further device for the same end was found in the passing of a Munity Act for one year only. If the discipline of the army was to be maintained, Parliament must be asked to renew this Act every year. The Triennial Act of 1694 ensured that there should be no more Long Parliaments, but that a general election should take place every three years, so as to ensure that Parliament kept in touch with the constituencies.

Religious toleration in a limited form was granted for the first time by the Toleration Act of 1689. "The Toleration Act takes the same place in the history of the relations of Church and State which the Bill of Rights holds in the history of the relations of king and people." The ruling idea upto that time had been one church in one State. By the Toleration Act of 1689, toleration was granted to all sects of Protestants except the Unitarians. The scope of toleration was narrow indeed but the Act recognised the important principle of recognition of diversity of religious opinion.

In 1693 a long step was taken towards the emancipation of the press. From the time of Elizabeth the government had sought to muzzle the expression of public opinion by a strict censorship over all printed matter. In 1693 the Licensing Act was not renewed. Thenceforward there was no check upon the press other than the law of libel.

In 1696 the procedure for trials for treason was changed by the Act regulating trials for treason. Its main provisions were that every person accused of high treason should be allowed the benefit of counsel; that he should be furnished with a copy of the indictment at least five days before the trial—

and a list from which the jury was to be taken, that his witnesses should be sworn; and that there must be for conviction two witnesses to the same overt act or to two related acts of the same treason.

The Act of Settlement (1701) is a document of the highest constitutional importance. By this Act the crown was settled upon Electress Sophia of Hanover and her heirs, because she was the nearest Protestant heir to the throne. The monarch was required to be a member of the Church of England. One of the provisions of the Act required that matters of State should be discussed in the Privy Council, and that the ministers who approved the policy should sign their names to the resolutions adopted. This was a blow at the growing institution of the cabinet. But it could not check the natural tendency of things. The Privy Council had become too large a body for transacting urgent business of government. Early in the reign of Anne the law was repealed and the secret meetings of the queen and a few chosen ministers continued. Another clause of the Act forbade all pensioners and holders of places at the hands of the crown to hold seats in the House of Commons. The object of the law was to prevent the king and leading ministers from controlling the action of the House of Commons through the bribery of office. Had this law been in operation there would not have grown that close relation between the executive and the legislature which characterises the English constitution. In 1707 it was modified by a law which provided that the holders of certain lower offices were not to sit as members of Parliament, but the holders of the high offices, created before 1705 were to resign their membership of Parliament on appointment. But the latter can offer themselves for re-election.

The most important provision of the Act of Settlement was concerned the tenure of office of judges. It made the judges practically independent of the king or his ministers. They were henceforth to retain their office on good behaviour and not at the pleasure of the king. They could be removed only upon an address to the crown passed by both the Houses. The independence of the judiciary, secured by the Act, is the corner stone of the liberty of the subject.

In the reign of William III the Cabinet System of government began to grow up steadily. But William III and Anne continued to preside over the cabinet and to guide it, especially in foreign affairs. Thus by a series of Acts the executive was made responsible to the legislature.

## XV. Significance of the Revolution of 1688

As compared to the French, Russian or other momentuous revolutions, the English Revolution did not result in bloodshed or violent socio-economic changes. The greatness of the Revolution lies not in the imposition of force but in unity of the Whigs and Tories, Anglicans and Dissenters against impoverished despotism. The consent for a silent revolution had mainly two aspects. First, it was no agreement to the settlement of the problems caused by the revolution. The finality of the revolution settlement was achieved after the succession of events between 1689 and 1714. Secondly, the immediate consent to the accession of William III and Mary did not mean an unqualified agreement to all the problems which were in existence in 1688 and before.

Consent necessitated compromise. The Revolutionary "settlement" reveals an adjustment of the political thoughts of Hobbes, Locke and Halifax. The Tories, deriving their ideas largely from Hobbes, were not prepared to suggest that the Parliament or people had power to depose a king. The Whigs, believing in Locke's political thought, wanted formally to declare that James II had been deposed for subverting the constitution of the kingdom and for breaking the original contract between king and people. Ultimately both the parties agreed to an amendment using the word "abdicated" for "deserted". The amended resolution resolved that James II had not been deposed but violating "the fundamental laws, and withdrawn himself out of the kingdom, has abdicated the government, and the throne is thereby vacant". But this resolution, thanks to the opposing views of the parties, misrepresented the facts, because James had not certainly abdicated the throne in favour

of William and Mary. Further evidence of the influence of Hobbes and Locke can be shown with reference to the revolution settlement. It was due to Locke that the leaders of the Settlement looked upon the State as a necessary evil and prescribed limited powers for the government. There was no reference to industry, literature, local government or property in the enactments of the Parliament. The idea of Locke that there should be separation of powers was accepted when the respective spheres of the monarch, parliament and judiciary were defined in a series of Statutes between the Declaration of Rights (1689) and the Act of Settlement (1701). The powers which were left to the king after the Settlement of 1689 were largely due to the Tory element drawing upon Hobbes and Halifax. The respect for the king was due to Halifax. His reverence was of such a type that even when his own partymen, the Tories, were gaining ascendancy in the House of Commons he turned to royal favour and continued to say "the Queen (Anne) is the centre of power and union". Though an ardent supporter of William III, he told Reresby that he had great respect for ex-king James II. Both Hobbes and Locke can be held responsible for the gradual decline in the political leadership of theologians. The former desired that the Church should be below the State, and man could gain salvation by his "two Virtues, Faith in Christ and Obedience to Laws". The latter considered religion to be of such insignificance that he omitted reference to the Church in his Civil Government. Macaulay paid glowing tributes to the services of Halifax in the Revolution by stating: "Our Revolution, as far as it can be said to bear the character of any single mind, assuredly bears the character of the large yet cautious mind of Halifax". He challenged the despotism of James II and fought successfully for the victory of Common Law—"not the king's Laws, nor the Parliament's Laws but the Laws of England", said he.

The revolution settlement further shows the compromising attitude of the Whigs and Tories. We have already referred to their respective attitudes towards the question of James II's flight from England. The Tories, on the accession of William III to the throne, gave up their defence for Jacobitism and upholding of a dubious Prerogative. By confirming the Protestant succession as devised in the Act of

(2) Whig and  
Tory  
Theories



Settlement, they made the party a national one and did not allow the above-mentioned Act to be labelled as a Whig-expedient. The ingenuity of both the Parties can be well appreciated when we find that the allegiance of the Whigs to Anne was due to her being a Protestant and that of the Tories because of her being a Stuart and a High Anglican. The settlement in matters of religion also shows toleration to some extent. Though orthodox legislations in favour of Anglicanism were passed, yet the Toleration Act largely gave freedom of worship to all Protestants. Of course, Papists or Unitarians were given no relief. In economic matters, the Whigs followed an exclusively mercantilist policy and brought rewards for their allies, the merchant community by the continuation of Corn and Navigation laws. In their zeal for British commercial prosperity, the Whigs instituted the Board of Trade, in 1696 opposed the Scottish Davien Company and ruined the nascent linen, wool and cloth industry of England. Their greatest achievement was the establishment of the Bank of England in 1694. The Tories foresaid this institution would install the merchant class in power. So they sought to compete with the Whig Bank of England by opening a Tory Land Bank in 1696. The land-owning class, to which the majority of Tories belonged, had earlier profited from the passing of the Bounty Act of 1689 which meant that large bounties would be given for the export of home corn. A historian has remarked that "the Bounty Act was the economic counterpart of the philosophy of Locke and Harrington. It marks the transition of political power from Tory to Whig".

It seems that one of the characteristics of the revolution of 1688 was its conservatism. The settlements of 1689 and subsequent years have been looked upon as a fulfilment of the legislations of the Long Parliament and maintenance of the Restoration settlement of 1660. The Declaration of Rights, by prohibiting the Star Chamber, Court of High Commission, claiming the privileges of freedoms of speech and imprisonment in the House of Commons merely registered the gains of the fruitful legislations of the Long Parliament. It enacted no new constitutional machinery except the Oath of Allegiance and regulation of the Succession of the Act of Settlement. The

Conservative  
Theories



powers of the monarch were otherwise slightly altered in favour of the Parliament. The beliefs in divine right theory and Prerogatives were no longer to be revived by any monarch after 1689. In reality there is much truth in the statement of Halifax that there was not much of change after the Revolution. He observed "After a revolution you see the same men in the Drawing Room (of the Court)" and "within a week the same flatterers" (*Political Thoughts and Reflections*). The king still chose and controlled his ministers. As in the time of Charles II, the ministers of William III and Anne were not large in number. In concurrence with the demand of the Parliamentarians in 1641 that the king should appoint such ministers who enjoyed the confidence of the Parliament, William III and Anne retained their ministers so long as they were backed by parliaments. William III on his accession declared "to maintain the lustere of the Crown". He did not hesitate to suspend the Habeas Corpus Act and increase the taxes. The revolutionaries quietly acquiesced in these doings, which remind us of Charles I and James II. The victory that Common Law had won at the Restoration was not disturbed, rather further assured in its place by the Act of Settlement. The clamour that the Anglicans raised in the Restoration period that the Church was in danger continued even after the Revolution. Neither the Clarendon Code nor the Test Act were repealed in the eighteenth century when religion became the handmaid of politicians. Thus conservatism as one of the features was hailed as the chief glory of revolution by Macaulay, who wrote in 1848 "It is because we had a preserving revolution in the seventeenth century that we have not had a destroying revolution in the nineteenth ; it is because we had freedom in the midst of servitude that we have order in the midst of anarchy".

But events beyond 1689 show that the revolution settlement was not so conservative. There were liberal ideas too. The powers of the Parliament over the king and Church increased. The relation between the Parliament and ministers gradually became more clear and steps were taken towards the evolution of modern Cabinet System. In the wake of the Revolution, the party comes in as a decisive factor in national politics. The role of parties was not discernible in the twenty-nine years preceeding 1689.

Legally, the Declaration of Rights and the Act of Settlement principally diminished the powers of the king and brought in limited monarchy. According to the former Act, the powers of the king to suspend and dispense with the Constitutions, to promulgate ordinances, the institutions of the Courts of Star Chamber, High Commission, North and Wales were taken away. He could no longer claim kingship by divine right, for Parliament determined succession and religion of the king. He had to allow freedom of speech and freedom from imprisonment during the sessions of the Parliament. He could not rule without parliament, not even for more than a year. The Bill of Rights directed him to hold parliaments frequently. After the passing of time Annual Appropriation and Mutiny Acts the king was forced to call Parliament every year. The Act of Settlement secured the independence of judiciary from the king's whims. No royal pardon could save anybody from impeachment. The above-mentioned Act further restricted the powers for the future Hanoverian kings, by providing that the monarch could go out of England only with the consent of Parliament and that neither a pensioner nor a person holding an office of profit under the Crown could become a member of the House of Commons. Of course, these provisions were repealed in 1706, 1708 and 1716. The impact of these legislations were realised by William III and Anne. The control over purse necessitated William III to beg money from the Parliament to prosecute the European wars. The king had to agree to partitioning of the Spanish empire against his personal wish. He had also to agree to the reduction of army. Queen Anne supported war or peace according to the wishes of Parliament. In the sphere of legislation, William III had to bow down to Parliament. He exercised his right to veto bills like the Triennial Bill of 1693 and Place Bill of 1694 and always aroused indignation of the Parliament. Queen Anne employed the tactics only once, against the Scotch Militia Bill of 1708. But these vetoes were becoming obsolete weapons. On all the six occasions, the sovereign failed to prevent the passing of legislations like Triennial and Place Acts. Never again after 1708 any king or queen of England dared to employ veto power.

Yet substantial powers remained with the monarchs even after the decline of Majesty. There was nothing in the Bill

of Rights to check the king in his selection of ministers and officials. Though William III formed a Tory ministry in 1690, yet he went on consulting his old courtier Sunderland. Queen Anne had still a greater hand in the formation of ministry. In spite of her liking for Tories like Harley and Marlborough, she kept in office moderate whig lords like Shrewsfury and Somerset. When the Whigs tried to frustrate her desires, she replied "whoever of the Whigs think I am to be hectored or rightened into a compliance, though I am a woman, is rightly mistaken in me". That the monarchy was still a force can be proved by the fact that never did Anne fail to secure a favourable Parliament, if she chose so.

The Parliament emerged victorious over the monarchy and Church as a result of the Revolution Settlement. We have already discussed the parliament's authority over succession to the throne, justice, army, finance, trade. The Sacheverell case demonstrated the supremacy of Parliament over church. Dr. Sacheverell was impeached in 1710 and the Whigs brought the charge that he "wickedly and maliciously insinuating that the members of both Houses....were....conspiring the ruin of the Church". The House of Commons still used impeachment against Somers, Orford and Halifax as the chemsy method of ministerial responsibility to Parliament. The prestige which the House of Lords had lost at the Restoration was never regained. The House of Commons became the more dominant body in matters of revenue and taxation. The second Chamber vainly protested against the "tacking" of non-financial bills to money bills in 1699. Again in 1700, the Lords had to withdraw their amendments when the Commons tacked a bill for resumption of William's Irish grants to a Land Tax Bill. Two years later, the Commons refused to accept the right of the Lords to lower the amount of fines prescribed in the Occasional Conformity Bill. The House of Lords bowed down to the strength of the Lower House when the latter resolved on the abdication instead of the Lord's theory of desertion of James II in 1689, the creation of the Bank of England in 1694 and the signing of the Treaties of Utrecht in 1713.

The Lower House also regulated elections. Qualifications for franchise was determined. Minors were excluded from being elected in 1696. Similary restrictions on certain classes

of persons were made by a number of acts, e.g. excise officers in 1700, holders of offices of profit under the Crown or of pensions therefrom in 1701 and pensioners for only a year in 1716. Property qualifications were prescribed for members of the Parliament, viz. possession of lands having an income of £ 600 for knights of the Shire and £ 300 for Burgesses in 1696 and 1711. Further, the Parliament claimed the right of deciding election cases as a result of the verdict of the Court in Ashby's case in 1700.

The victory that Anglicanism obtained in the Restoration was confirmed in the Revolution Settlement. William III, though a Calvin, had no other alternative but to accept the Anglican Church in the Oath of Coronation, the Bill of Rights and the Act of Settlement. A sovereign of England could neither be nor marry a Papist. The supremacy of the established Church was further recognised in the Toleration Act when relief was refused to Catholics and non-Christians. The Test Acts were not repealed to give political rights to Dissenters. The position of the Church was secured by the provisions against the occasional Conformity in 1711 and the passing of the Schism Act in 1714. The latter Act was promulgated "to prevent the growth of schism and for the further security of the Church of England and Ireland as by law established". The Sacheverell case showed the Whigs that it was dangerous to provoke the Churchmen.

Seventeenth century knew ministers and how to keep them responsible to Parliament. But they were ignorant of the mechanism and principles of modern cabinet government. William III though believing that the privy council was the formal centre of government, chose and dictated policies to the members. Sir William Anson informs us that his reign saw decline in the powers of the privy council. Queen Anne was equally determined to choose her ministers and not according to the clamours of party or parliament. The men of the period between 1689 and 1714 also were ignorant of Cabinet. In a debate on the king's speech in 1691, country member of the Parliament protested in these words "Cabinet—Council is not a word to be found in our Law-books. We knew it not before : we took it for a nick-name. Nothing can fall out more un-

happily, than to have a distinction made of the 'Cabinet' and 'Privy-Council.'" Defoe looked askance at the Cabinet as "modern and eccentric".

But the genesis of the Cabinet system can be traced in the recognition of the principles of secrecy and despatch, and that royal pardon could not save an impeached person in the days of Charles II and in one of the clauses of the Nineteen Propositions tendered to Charles I that nominations of all privy councillors were to be approved by Parliament. These ideas were recognised and revived in the reign of William III. Pressure of events led to further progress towards cabinet government. The long-drawn continental wars in the reigns of William III and Anne made cabinet government inevitable. William III was forced to entrust the affairs of government to the Whig "junto" in 1696 for their advocacy in war. The expedience of formation of ministry on the basis of a single party was also twice adopted by Queen in 1703-04 and 1710. Besides war, another factor, the role of the treasurer, cemented the bond between ministers and parliament. Somers, the chief legal architect of the Revolution settlement, served William III and Mary as their chief legal officer in the Commons. The appointment of Charles Montague, a first-rate financier, as treasurer and Chancellor of the exchequer, enabled England to tide over the financial crisis and war situation by pursuing Parliament to agree with the Bank of England and a complete overhaul of the coinage. Harley and St. John were not only favourites of Queen Anne but also great leaders of the Commons. Thus the financial powers of the Commons, which was a potent instrument for bringing the despotism under control during the Stuart period, now created no difficulty for the sovereigns after 1689. The treasurer acted in double capacity—management of parliament and its manipulation for the benefit of Majesty. Another visible progress from 1710 towards cabinet government was seen in the fact that Harley did not ask the higher officials to leave their jobs on the fall of the Whig party from power but left the bureaucracy to serve successive governments.

In short, the quarter of a century following the Revolution of 1688 is also marked as the formative period of cabinet government. Impeachment was becoming an obsolete method of seeking responsible government. Now, when the Crown and parliament agreed on a national policy, the ministers were



appointed on a basis as to carry out the task individually and collectively. Sometimes, changes in ministry were made in order to secure cooperation of parliament. Yet it must be remembered that much still had to be done in determining the relation between cabinet and parliament. England had not yet learnt that loss of confidence of commons meant the downfall of a minister, a bill introduced by a member of the cabinet was

—absence of notice of 'party system'. a government bill, and the official position of the prime minister as the recognised head of the Cabinet and to whom other members must owe allegiance. Moreover, the presence

of the sovereign in meetings of the Cabinet and the absence of a notion of the close relationship between party and cabinet, stood in the way of realisation of cabinet government. England was far away from 'party system'. The Whig and Tory leaders knew nothing of their fundamental differences except that the former stood for something sectional and novel, the latter for the tradition.

The Settlement after the Revolution was thus in a fluid stage. The theory of limited monarchy as stated in the Bill of Rights, Act of Settlement did not check Sanctity of the William III and Anne in asserting their Settlement authority over all major appointments and accepting the advice of their ministers they trusted. The Parliament wanted, but had not learnt the method of enforcing ministerial responsibility except impeachment.

Yet the Settlement received sanctity. The yardstick of the Revolution Settlement was applied to all measures of reform in the eighteenth century. Parliament did little legislation except some enclosure acts or private bills on turnpike roads and economic questions. It went on ignoring the demands for revising the qualification of voters and enquiring into electoral constituencies, and also the significant changing social conditions which arose from industrial revolution. Throughout the eighteenth century no improvement was effected either in local or municipal administration and education. The results were far from happy. As the Revolution settlement allowed freedom to the local authorities, the Justices of the Peace allowed inefficiency in local government and gave full scope to tyranny and favouritism. The municipalities were reformed as late as 1835. Though the eighteenth century produced brilliant men-



of-letters and started Charity and Sunday schools, yet secondary and higher education was sadly neglected well nigh till the 19th century. The failure of James II's attack on the Universities resulted no doubt in preservation but misuse of academic liberty. The headmasters of endowed schools sometimes closed the institutions and lived on endowments. The eighteenth century governments did not dare to repeat the policy of interference with universities like the Tudors and Stuarts and did nothing to change the rule that Fellowship of the universities could be awarded only to a Churchman. The position to which the Anglican Church was restored in the settlement of the Revolution was not disturbed till 1829.

The Revolution Settlement as the bulwark of English liberty was praised not only by the eighteenth century legists like Blackstone (*Commentaries on the Laws of England*, 1765), but also by nineteenth and twentieth century writers like Macaulay and Prof. G. W. Keeton. Prof. Keeton in his recent book while lamenting the growth of delegated legislation and the loss of the supremacy of Parliament, observes "the Revolution of 1688 established in these islands the liberal State founded on political toleration. Its lifeblood has been the acceptance of certain fundamental principles underlying our political organisation, the 'agreement to differ' together with the acceptance of a clear delimitation between the spheres of private and State action.....Our commercial supremacy has gone, our colonial empire is going, and for the first time since the Revolution of 1688, political doctrines based on intolerance of opposing views are being industriously propagated."

## CHAPTER VIII

### DEVELOPMENT OF THE CONSTITUTION UNDER THE HANOVARIANS (1714-1832)

#### 1. The Nature of Government in the Eighteenth Century.

The Glorious Revolution transferred power from the crown to Parliament, but did not make Parliament representative in character, nor responsible to the people. In the Revolution of 1688 the common people had little share. It was primarily the work of a small group of political leaders who were politically far in advance of the general mass. It was due to their efforts that James II was supplanted by the Dutch William on the throne of England. They again made their influence effective in the politics of England by preventing the restoration of the Stuarts and securing the throne for the Elector of Hanover in 1714. Thus within a period of twenty-six years they scored a double victory over the Stuart dynasty. It is no wonder, then, that power would fall to their hands. It is for this reason that Marriott has characterised the period between 1688 and 1832 as marking "the zenith of the power, if not of the House of Lords, at least of the Lords."

The enclosure movement and the Industrial Revolution gave rise to capitalist economy, which made its influence felt in politics. The adoption of capitalist economy in agriculture increased the number of large estates ; and the number of freeholders was so much reduced that they came to form a small part of the country population. The great lords became to an increasing degree the owners of the land and acquired supremacy in local administration. The mass of agricultural labourers, artisans, apprentices and journey men had no voice either in the choice of members of Parliament or of the local officials. Aristocrats or their nominees occupied the seats in both the Houses of Parliament. The nominees of the lords in the House of Commons did not voice the opinion of the people, because what we understand by public opinion had not arisen

in England. They had to obey the orders of these lords who sent them to the House of Commons. The position of the aristocratic protege in the eighteenth century has thus been indicated by a distinguished statesman of the age: "He is sent here by the lord of this or the duke of that, and if he does not obey the instructions which he receives he is held to be a dishonest man."

In the eighteenth century, Parliament, though a narrow oligarchical body, controlled the king in five important respects.

King and  
Parliament

First, the king had no means of raising the revenue without the consent of Parliament.

He had to depend on what was granted to him by way of the Civil List. Secondly, the king could not make laws on his own responsibility not as a rule prevent laws from being made against his advice. The last occasion on which a monarch has exercised the right of vetoing a bill was in 1707 when Anne vetoed a Scotch Militia Bill. Thirdly, the king could no longer punish his political opponents by influencing the judges as the Stuarts had done. Members of Parliament, therefore, could courageously criticise the ministers. Fourthly, the king could no longer protect a minister who had lost the confidence of the House of Commons. Fifthly, the king could not maintain a standing army and hence was powerless to overawe Parliament, which came to assume the supreme authority in the nation. The monarch, however, still exercised considerable influence over the composition of both the House of Commons and the House of Lords. A large number of 'place men' persons in the service of the Crown sat in the House of Commons; and the king could buy members by providing pensions and sinecures to them. The monarch could also force the House of Lords to pass a measure by creating or threatening to create a number of Lords to outweigh the votes of the opposing Lords. Anne created twelve new peers in 1711 to make the House of Lords agree to the ratifying of the Treaty of Utrecht. The Whigs attempted to take out this prerogative by pressing forward in 1719 the Peerage Bill, by which not more than six new peers might be created in a reign. Had this bill been passed, the safety-valve of the constitution by which the reactionary tendencies of the territorial magnates could be checked would have been closed. But the bill was dropped on account of Walpole's opposition.

The control of parliamentary machinery fell to the hands of the oligarchy of landed aristocrats. Sydney Smith, writing in 1821, declared that "the country belongs to the Duke of Rutland, Lord Lonsdale, the Duke of Newcastle, and about twenty holders of boroughs—they are our master." In spite of its exaggeration, the statement had some element of truth in it. The Duke of Norfolk did in fact return 11 members, Lord Lonsdale returned 9, Lord Darlington 7, the Marquis of Buckingham and Lord Carrington 6 each to the House of Commons. A petition, presented in 1793 on behalf of the 'Friends of the People' declared that 357 members were returned by 164 patrons, of whom 40 were Peers. Oldfield declares that in 1816 no fewer than 487 out of 658 members of the House of Commons were nominees; that of the members for England alone 218 were returned by the nomination or influence of 87 peers, 134 by the powerful commoners, and 16 by the government.

Poor men found it extremely difficult to get themselves elected to the House of Commons. In 1711 it was enacted that a knight of the shire who wished to be elected must possess landed estate worth £ 600 a year, and a borough member, estate worth £ 300. Seats in the House of Commons tended to become hereditary. "In the general Election of 1761, as many as 40 per cent of all the candidates returned were men whose constituencies had been represented by their ancestors for several generations and another 35 per cent belonged to old-established, parliamentary families." It has been estimated that in 1780, only 6000 voters returned a majority of members in the House of Commons. This shows that the number of voters in many of the boroughs was extremely small. The voters in the 'rotten boroughs' were ready to sell their vote to the highest bidder. Vacancies in the House of Commons were often advertised in newspapers, the average price of a seat in the House of Commons being £ 2000.

The influence of the lords and the rich commoners was visible not only in the central legislature, but also in local government. The eighteenth century has been called the apotheosis of the territorial magnates. None but a rich landed magnate could hold any high honorary post in the local government. By an Act of 1662 the militia colonelcies

House of  
Commons—a  
preserve for the  
rich

Aristocratic  
influence in  
local government

were restricted to men earning £ 1000 a year from landed property, the lieutenant colonelcies could not be held by men whose income did not come up to £ 600 a year from land. Under George III the qualification for country magistracies was raised £ 60 to £ 100 a year, and for deputy-lieutenancies to £ 200 a year. Thus the discharge of administrative functions was made to depend, for the first time in the history of England, on a high qualification in landed property. The country Magistrates were all-powerful in local administration for two hundred years, from 1688 to 1888.

The House of Commons was not only unrepresentative, but also irresponsible in character. The House did not like to allow debates and division lists to be published, because it denounced the idea that members were responsible to some authority outside the walls of Parliament. It claimed, even to deprive electors of their franchise, to decide cases of disputed elections, and to arrest persons guilty of least disrespect towards it. The democratic forces generated by the Industrial Revolution, the American Revolution and the French Revolution ultimately destroyed the oligarchy of landed magnates.

## II. George III's Attempts to Revive the Power of the Crown, (1760-1782)

The accession of George III was as significant as the reign of the first two Hanoverians in English constitutional history. Being aliens in language, outlook and sympathy the first two Georges left the administration and working out of the Settlement of the Revolution to the Whigs. But George III, born and bred in England, was determined not to delegate his powers of governance to the Whig ministers and politicians. He exercised all the legal and constitutional rights as outlined in the Revolution Settlement to beat the Whig in their own game. Hence we should accept some modern scholars' view that he was acting unconstitutionally and a prototype of Charles I with much reservation.

There are some striking resemblances between Charles I and George III although they are separated from each other by more than a century. Both of them were not destined to be kings, for Charles I was the younger son and George III was a grandson of George II. So neither of these two were trained in the art of government nor were they before public view since their

births. People of England expected in both the cases that they would take up a popular policy—in one case, instead of a passive and peace-making policy of James I an active and pro-Protestant foreign policy, in the other, the monstrous regime of Newcastle and his compatriot Whig bosses. Again both of them were not looked down as foreigners. Charles I had left Scotland at the age of three and George III was the first Hanoverian to be born in England. Both of them were obstinate. As they had little self-confidence, both distrusted their ministers.

Yet George III was more fortunate. He was trained as an Englishman to master the Revolution Settlement and the dignity and power of kings it had prescribed. His mother, Augusta told him "George, be king". George III rose up to his mother's expectations, basing his ideas on Bolingbroke's *Patriot king* and accepting the legal position of the king after the Revolution of 1688. He rescued monarchy from what it had been in the reigns of the first two Georges. Shrewd as he was, he translated the theory of the *Patriot king* to practice by raising monarchy above parties and defending the Anglican Church against the chagrin of the Catholics. He utilised the Tories in rullifying the power of Whigs. He sought to create his own party called the king's friends, whose only principle was to obey George. In spite of all his religiosity, good private life and a sense of royal dignity, he suffered from limited and narrow outlook. He was slow and had shallow intelligence. Circumstances were there in the mid-eighteenth century to allow the king to assert himself. Because of his sluggish habits and narrow intellect he took ten years to put an end to the Whig power and chose minister after his own heart. But when George III became successful, his hey day was gone. He fell a victim to his own choice in 1784 by selecting Pitt the younger as his Prime minister.

\* The socio-political set up of England in the sixties of the eighteenth century was favourable for the king George III.

Circumstances in favour of George III      Fortunately for him, the Tories had a comeback and the Whigs suffered denunciations due to the abuse of power. Jacobitism was dead by 1760. The Tories shook off their old policy and now looked for and supported monarchy. The Whigs had maintained themselves in power from 1714 to 1760 by bribery, corruption, patronage, avoiding all reforms



which might disturb the apparent calmness, and avoidance of public expenditure on domestic and foreign matters. Bolingbroke, many Englishmen and George III were determined to break this monopoly of Whigs. The Whigs themselves were not united as a party. Their leaders quarrelled amongst themselves and had their own ideas. Both —division amongst whigs Elder Pitt and George III believed in the *Patriot king* to some extent. Pitt the Elder differed from his partymen in several matters—critical of Walpole and Newcastle and Carterest, impatience of jobbery, incorruptible, vision of an imperialist and vigorous foreign policy, desire of parliamentary reform and champion of free press and reporting of parliamentary debates. Shelburne was a Chathamite. But other leader's like Burke and Charles Fox were inconsistent. Burke, a great admirer of the Settlement of 1688-89, had no desire like Elder Pitt to reform Parliament. He was a critic of George III and his distribution of patronage. Whereas Burke was an impassioned opponent. Fox was a supporter of the French Revolution in the beginning and ended his life as a believer in the good intentions of Napoleon I. Yet both of them wanted to sweep away the vested rights of the East India Company and uproot slave trade. Burke held that politicians should retire to the country estates. But this attitude was opposed by Fox, who wrote to Rockingham "you can but serve the country by continuing a fruitless opposition. I think it impossible to serve it at all except by coming into office". But there are some points of resemblance amongst the Whig leaders—their sympathetic attitude to India, and preservation of the Empire by making concessions. They were brilliant but inconsistent and distrusted. These traits are particularly true of Fox and Shelburne.

Because of disunion and existence of factions amongst Whigs, George III could easily play one against the other. In between 1760 and 1761 he could easily set Pitt the Elder against Newcastle, because the former ready to conquer new worlds, the latter satisfied with control over domestic gains. Pitt resigned in 1761 when he was not allowed by Newcastle to fall upon Spain. Newcastle now called in Bute to take over the charge of treasury. But Bute by driving out officials appointed by the Prime Minister forced Newcastle to resign in 1762. When the king found that it was difficult to dislodge George Grenville was backed by the enormous political power of the

Duke of Bedford, the leader of the Bloomsbury Gang had become the prime minister in 1763, George III sought reconciliation with the great Whig families and successfully driving out Grenville made Rockingham the Premier in 1765. Rockingham's policy of appeasing the American colonists by repeal of the Stamp Act, found opposition from George III. The king by conferring earldom won over Pitt the Elder, and made him his minister in 1766. By this time his intelligence had departed. He made a ministry of such Whigs who differed from each other e.g. Charles Townshend, Duke of Grafton, Lord Shelburne. An accurate description of this ministry is given by Burke : "Such a piece of mosaic, such a tessellated pavement without cement, patriots and courtiers, king's friends and republicans, Whigs and Tories, that it was indeed and curious show, but unsafe to touch and unsure to stand on". A similar composition is noticeable in the coalition-ministry of North and Fox in 1783. The fate of the second Rockingham ministry (1782) was certain from the days of its formation, because he had included as ministers his bitter enemies like Fox and Shelburne.

The dissensions amongst the Whigs were fostered by George III because he wanted ministry after his own heart and believed that executive power is vested in the Crown. In his search for a favourable ministry, he drove ministers in quick succession between 1761 and 1770 and again from 1782 to 1784. Even his own tutor Bute failed to satisfy him in 1763. The long ministry of Lord North between 1770 to 1782. was allowed to continue, because the king directed the policy of the government and was the real prime minister. George III members of the Parliament and the "king's friends" to be included in the cabinet. Glenville much to his dislike was forced to bring in the old Whig bosses like Newcastle, and Rockingham in 1765.

In these actions of George III we can discern his mind and judge his actions from the constitutional standpoint. He was acting within the limits of constitutional propriety. He accepted the conventions of a prime minister and a cabinet which had been fixed since the Glorious Revolution. He was also absolutely within his rights to choose the ministers, to confide or reject the advice tendered by his ministerial advisers. He also claimed that never did he promise to "put his personal

influence and connexions unreservedly at the disposal of his official servants." The House of Commons did not insist upon selection of ministers. If successive ministries failed to satisfy the king, the fault lay with the personalities. The tenures of cabinets were short because till 1770 he could not make all the selected accept office. In between 1761 and 1766 Pitt the Elder refused to join the cabinets.

We should also remember that George III in order to have a firm hold on the cabinet chose to rely on the men of the cabinet itself in order to break ministers. Those who advocated George III's opinions, known as king's friends, succeeded in weakening the first and second Rockingham (1765-1766), and Shelburne ministries (1782-1783). Some scholars look upon the groups of king's friends as intriguers who helped in checking the development of cabinet system. But Prof. Dodd rightly defending the good intentions of George III observes "Such groups of 'king's friends' and 'queen's friends, as we know, were an established feature of the political landscape ..... If each of Bute's successors, until the king found Lord North, had only a year or two of power, the reason must be sought rather in the instability, of political groups than in 'backstairs' royal intrigues".

Besides selection of ministers and formation of a favourable group George III considerably increased the power of the Crown by managing the Parliament. He accepted the supremacy of Parliament. He was perfectly right in securing the control of Parliament itself by the time-honoured corrupt practices adopted by the Whig bosses. He influenced the members of the Parliament by distribution of royal patronage, offices, employments and contracts and distribution of titles and pensions. We have seen how the Whigs had maintained their power between 1714 and 1760 by these very methods of George III.\* The king also did not create more peer than George II or Pitt the younger. As compared to 47 new peerages granted by George III prior to 1784, George II created 65 and Pitt the younger as many as 90 during his first ministry. Some historians think that George III went beyond his powers in

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\* The Commons failed to exclude Government contractors from membership of that House in 1779-1781. That very House itself rejected Burke's bill for regulation of civil list, and pensions in 1781.

canvassing the members of the House of Lords to reject Fox's India Bill in 1783. But the king was entitled to ask for the advice of any peer. Technically Lord Temple had conventional right of meeting George III. It was on Temple's advice that the king authorized him to inform the House of Lords that any one who voted for the Bill would be treated as enemy of His Majesty. Subsequently, the House of Commons resolved "it is now necessary to declare that to report any opinion or pretended opinion of His Majesty upon any bill or other proceeding depending in either House of Parliament with a view to influence the votes of members is a high crime and misdemeanour, derogatory to the honour of the House, a breach of the fundamental privileges of Parliament, and subversive of the constitution of the country". In spite of this attitude of the House, the king succeeded because the House of Lords rejected the Bill. The House of Lords had not become an impotent body in the eighteenth century. If George III gave more importance to the Lords, he was not working against the Constitution in rejecting the resolutions tabled by the Commons.

The power of the Crown increased also due to two other factors departmentalism and bureaucracy in whom Burke saw the nightmare of an inner cabinet. Some scholars hold that George III wanted to undermine the growth of the theory of collective responsibility of cabinet and weakened ministry by his contacts with bureaucrats, the non-partymen who had been rewarded with offices for their services or agreeing to carry out the king's wishes. But the theory of collective responsibility has recently been cultivated by the ministers. The attitude that each member is responsible for his own department alone began with Pitt the Elder. This so-called 'departmental system' was rather the result of the indolence of North and Grafton. North admitted later on : "In this country some one man or some body of men like a Cabinet should govern the whole and direct every measure. However, the Government of Departments was not brought about me . . . I found it so, and I am ready to confess that I had not vigour or resolution to put an end to it". Of course, the king himself wanted that the ministers in a cabinet should not have an unanimous opinion on any subject. But here we should also remember that in the eighteenth century it was not an established practice.

that all ministers should profess indetical views before Parliament. Harry Fox as Secretary of War opposed Hardwicke's Marriage Bill against the Prime Minister's desire that supplies for good seamen should be granted. Pitt the Elder as Paymaster supported a motion for 10,000 in 1751, and Lord Chancellor Thurlow opposed those motions in the Lords which Pitt the younger supported in the Commons between the years 1784 to 1792. Moreover the influence of bureaucrats increased to the advantage of both the ministers, who were unable to cope with the growing complexities of government and the king, who said that in order to infuse energy into a "paralytic administration" it was necessary to use these prototypes of modern civil service.

In short George III increased the powers of the Crown, restored the royal dignity by breaking the Whig oligarchy, selecting ministers at his own will and ultimately triumphed in making Lord North act as a rubber-stamp for twelve years (1770-1782). But he did all these in accordance with the powers left to the monarchy after the Revolution Settlement. He placed all the cards according to the rules of the game. The desires of the Commons were not always flouted. If he chose to overrule the dictations of the Lower House, he did it with the backing of the Upper House. The results of George III's attempts to revive the royal power were not at all happy. George undoubtedly fulfilled his mother's wish that he should become a king. But to his dismay, he found the shrinkage of his kingdom by the loss of American colonies, the enormous popularity of Wilkes and the introduction of Dunning's Resolution in 1780 that "the influence of the Crown has increased, is increasing and ought to be diminished". Fortunately the king saved the country by asking younger Pitt to form government.

The situation was critical. The House of Commons was two to one against the ministry, and it passed several votes of want of confidence against it. But Pitt knew that the House did not represent the will of the nation. He was eager to dissolve the House and appeal to the nation at large. The House, however, attempted to prevent a dissolution by postponing the supplies. The firm attitude of

Re-establish-  
ment of minis-  
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sibility

Pitt, coupled with the support from the electorate, contributed to the dwindling of the opposition to a bare majority of one within four months of his assumption of power. Parliament was now dissolved and the general election which followed gave him such a majority that he remained comfortably in office for the next seventeen years. The king trusted him and he could not afford to quarrel with him for fear of bringing back the Whigs. With the formation of the ministry of Pitt, the personal government of the king came to an end. George III "had now a minister", writes May, "who, with higher abilities and larger views of state policy, had a will even stronger than his own. Throughout his reign it had been the tendency of the king's personal administration to favour men whose chief merit was their subservience to his own views, instead of leaving the country to be governed by its ablest and most popular statesman. He had only one other minister of the same lofty pretensions—Lord Chatham; and now, while trusting that statesman's son—sharing his counsels, and approving his policy—he yielded to his superior intellect."

### III. The question of Regency

George III was disabled from transacting business on account of an attack of mental derangement in 1788. Parliament at that time stood prorogued, and according to precedent it could not proceed to business until the session had been opened either by the king in person or by Commissioners appointed by him. This gave rise to an important constitutional question.

None but the king can call, prorogue or dissolve Parliament. But the king may be absent from the kingdom, or he may be a minor or may suffer from illness. When the Norman kings were absent from England, they left the administration in the hands of their Justiciar. In the cases of minority of Henry III, Richard II and Edward V, the council nominated the Regents. But in the fifteenth century Parliament claimed the sole power to appoint the Regent as well to define the limitations under which he should exercise the royal prerogatives. In 1536 it passed a statute empowering Henry VIII to appoint a Council of Regency for his successor. It looked as if the king could not appoint a Regent for his minor successor without the sanction of Parliament.



At the time of temporary insanity of George III in 1788, Pitt induced the Chancellor to affix his seal to a commission for opening the prorogued Parliament. With regard to the question of appointment of the Regent, a curious reversal of the traditional role of the two historic parties took place. The Whigs had been traditionally opposed to the exercise of prerogative power of king. But now the eldest son of George III, the future George IV, was in close alliance with the Whigs, and their leader Fox "advanced the startling opinion that the Prince of Wales had as clear a right to exercise the power of sovereignty during the king's incapacity as if the king were actually dead; and that it was merely for the two Houses of Parliament to pronounce at what time he should commence the exercise of his right." Pitt and his Tory followers feared that if the Prince of Wales became Regent, the Whigs would be called to power "by as sudden an act of prerogative as that by which Pitt had been appointed by the king." Pitt, therefore, argued that Parliament possessed complete and absolute power to make what provision it thought fit for carrying on the government. The Prince of Wales too was moved by this argument and he made a formal statement through his brother, the Duke of York, in the House of Lords to the effect that "he understood too well the secret principles which seated the House of Brunswick on the throne, ever to assume or exercise any power, be his claim what it might, not derived from the will of the people, expressed by their representatives and their lordships in Parliament assembled."

A Regency Bill, which vested the regency in the Prince of Wales but restricted his powers regarding the creation of peers and grant of offices, was introduced. But how can a bill become law without the consent of the king? The king was incapable of giving his assent. It was decided to take recourse to a legal fiction by which the royal assent was to be given to this bill by Commission under the Great Seal. But the king recovered from his illness before the bill was finally passed.

George III fell a victim to the same disease again in 1810 and the precedent of 1788 was followed in passing the Regency Bill. The Regency set up in 1810 continued to function till the death of George III in 1820.

The last Regency Act, passed in 1937 makes provision for minority, absence and illness of the king. If the monarch happens to be seriously ill or in minority, the Regency is to be entrusted to the person next in line of succession to the Crown, provided he or she is British subject and not disqualified by clauses in the Act of Settlement. The regent can give assent to all bills excepting one altering the succession or the established Presbyterian Church of Scotland. The monarch can provide for the administration of the country during his absence by delegating his powers by Letters Patent to the Councillors of State consisting of his or her spouse and four persons next in line of succession.

#### IV. Constitutional Changes in the Reign of George III

The sixty years of the reign of George III clearly illustrates how 'long reigns may begin and end in different world'. The king began his reign with the idea of wresting power from the control of the Whig magnates. The task did not appear unduly difficult, because he could hope to outbid the richest of Whig lords with the resources of the crown behind him and with the court sinecures at his gift. But he wrecked his cause by his rough methods and by his choice of bad agents. He identified his party with the suppression of the American rebellion and the victory of the Americans sealed the prospect of making the monarch the centre of English political life. In Pitt he got a master instead of a servile agent. At the close of his reign, he was not the king he had meant to be. Direction of policy passed finally from the king to the cabinet.

- The long wars against the Revolutionary France and Napoleon Bonaparte strengthened the growing institution of the cabinet. The party division was almost suspended. Part of the Whig Opposition under Burke joined the Government, and this gave an overwhelming majority for the cabinet during the remainder of Pitt's ministry. The people were so frightened by the excess of the French Revolution that they willingly allowed almost dictatorial powers to the cabinet.

The reign of George III was remarkably barren in actual constitutional legislation. But the growth of conventions made the epoch one of immense constitutional progress. The convention that the ministry depends on the good will of Parliament was slowly and after many struggles firmly established in this long reign. At the beginning of the reign of George III, the House of Lords was the stronghold of the Whig 'landowning aristocracy. But George III broke up the Whig domination by conferring peerage on 388 persons, of whom 128 were new creations. Pitt the Younger himself advised the king to create 140 lords out of the aforesaid total of 388. The Act of Union with Ireland (1800) allowed the Irish peers to elect 28 representatives for life to the House of Lords. Besides these one of the four Irish archbishops and three of the eighteen bishops were to sit in the House of Lords by rotation.

The House of Commons did not represent the people of England indeed, but the influence of the Industrial Revolution, the American Revolution and the French Revolution made it more susceptible to the opinion outside the walls of Parliament. Pitt had to give up his Russian policy in 1791 on account of national opposition. The people, most of whom had no franchise, began to make their influence felt by organising public meetings, processions, deputations, petitions, and addresses to the Crown. The public began to show its interest, in the debates of Parliament, though Parliament held debates within closed doors and looked with disfavour upon the publication of the debates. Parliament did not formally authorise the publication of debates but tacitly allowed it from 1771. The growth of public opinion ultimately compelled the old political forces to acknowledge defeat and surrender their claim to govern the nation against its will.

PART II

MODERN DEVELOPMENT OF THE  
ENGLISH POLITICAL INSTITUTIONS

—*An Analytical Study*



## MINISTRY AND PARTY POLITICS 1820—1962

### The Tory Ascendancy (1784-1830)

#### George IV (1820-30)

PREMIER	PARTY	REMARKS
Liverpool (1812-27)	Tory	Old Tories (1812-1822) headed by Castlereagh, New Tories (1822-27) headed by Canning.
Goderich (1827-28)	Whig-Canningite.	The Prime Minister never met Parliament.
Wellington (1828-30)	Tory	Repeal of Test and Corporation Acts 1828, Catholic emancipation 1829.

### The Whig Reforms (1830-41)

#### William IV (1830-37)

Grey (1831-34)	Whig	First Reform Act (1832)
Peel (1834-35)	Conservative	Four months only.
Melbourne (1835-41)	Whig	Municipal Corporation Act (1835).

### Re-Christening of Tory and Whig parties as Conservative and Liberal Parties

#### Victoria (1837-1901)

Peel (1841-46)	Conservative	Repeal of the Corn Laws (1846). Breakdown of the party system.
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### Party system in abeyance (1846-65)

Russell (1846-52)	Liberal	Conservative party split into Peelites and Protectionists.
Derby (1852)	Protectionist	Lasted less than a year.
Aberdeen (1852-55)	Liberal-Peelite	Free trade completed.
Palmerston (1855-58)	Liberal with Conservative outlook.	The Crimean war.
Derby (1858-59)	Conservative	Minority Government.
Palmerston (1859-65)	Liberal with Conservative outlook.	Held the Reform question in check.
Russell (1865-66)	Liberal	
Derby (1866-68)	Conservative	Second Reform Act (1867)



**Duel between Conservatives and Liberals (1868-84)**

PREMIER	PARTY	REMARKS
Disraeli (1868)	Conservative	
Gladstone (1868-74)	Liberal	Era of feverish reforms.
Disraeli (1874-80)	Conservative	Solicitude for Labour.
Gladstone (1880-85)	Liberal	Rise of Home Rule Party.

**Conservative Ascendancy (1886-1905)**

Salisbury (June 1885-86 Jan.)	Conservative	
		Home Rule party holds
Gladstone (1886 February-July)	Liberal	balance between the two parties. Chamberlian resigns from Liberal party.
Salisbury (1886-92)	Conservative	Unionist party formed. The Local Govt. Act (1888).
Gladstone (1892-94)	Liberal	Home Rule Bill defeated. The Independent Labour Party formed (1893).
Rosebery (1894-95)	Liberal	Death Duties imposed—the first socialist measure.
Salisbury (1895-1902)	Conservative	The Boer war. The Labour Party formed (1900).

**Edward VII (1901-1910)**

Balfour (1902-5)	Conservative	Chamberlian resigned (1903) on the question of Tariff reform.
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**Era of Liberal Reforms (1905-1914)**

Campbell-Bannerman (1905-8)	Liberal	In the election of 1906, Conservatives got less than 160 seats, Liberals 390.
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**George V (1910-36)**

Asquith (1908-15)	Liberal	The Parliament Act of 1911.
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**The Age of Coalition or National Govt. (1915-22)**

PREMIER	PARTY	REMARKS
Asquith (1915-16)	Coalition	The Great war.
Lloyd George (1916-22)	Coalition	The War Cabinet formed.
Bonar Law (1922-23)	Conservative	..
Baldwin (1923-24)	Conservative	Advocated protection, but defeated in General Election of 1924.
Ramsay MacDonald (1924)	Labour	The Labour had 191 seats —Conservatives 258— Liberals 159. Liberals supported Labour.
Baldwin (1924-29)	Conservative	Anti-labourite laws passed.
Ramsay MacDonald (1923-31)	Labour	Labour gained 288 seats, Conservatives 260 and Liberals 59 seats.

**National Govt. (1931-1945) The second epoch of Coalition**

Ramsay MacDonald (1931-35)	Coalition	242 Labour members broke away from Mac-Donald.
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**Edward VIII (1936) George VI (1936-1952),****Elizabeth II (1952- )**

Baldwin (1935-37)	Coalition	The Abdication Crisis.
Chamberlain (1937-40)	Coalition	The second World War begins (Sept. 1939).
Churchill (1940-45)	Coalition	..
Attlee (1945-51)	Labour	..
Churchill (1951-55)	Conservative	Suez Crisis.
Anthony Eden (1955-57)	Conservative	Suez Crisis.
Harold Macmillan (Jan. 1957—Oct. 1959)	Conservative	
* Do (1959- )	..	

## CHAPTER IX

### PARLIAMENT—THE HOUSE OF LORDS

#### 1. Chief Problems of the English Constitution

A strong executive authority is essential for maintaining peace and order in a country. But if the executive is too strong, it would disregard the wishes and happiness of the community. The chief problem in the constitutional history of England had been to make the executive authority strong enough to keep peace and order and yet not to make it sufficiently strong to destroy the liberty of the people. The problem had been mainly solved by the differentiation of the functions of the legislature, the executive and the judiciary to a certain extent.

In the Anglo-Saxon age the king was the supreme legislator, the supreme executive and the supreme judge. But he was not absolute in power. He had to carry out his functions with the counsel and consent of the Witan. The sphere of king's activity was limited, as most of the work of administration was carried on in the local courts. Moreover, there was hardly any necessity for making new laws or for raising new taxes in those primitive days, when people were governed by custom.

With the conquest by William of Normandy, kingship became despotic and absolute. There was at first no separation of the executive, legislative and judicial functions. The Curia Regis in the central government and the Sheriff in the local government carried on all these functions. But in the thirteenth and fourteenth centuries the courts of Common Law (the King's Bench, the Common Pleas and the Exchequer) and the Chancery became separated from the King's Council. The Norman and the Plantagenet kings checked the power of the barons and the clergy. But they never ceased to call the Great Council, in which new laws were made and extraordinary taxes were voted. The Great Council was changed into Parliament in order to check the power of the barons and facilitate the raising of taxes. When the absolutism of the Plantagenets reached its climax in the reign of Richard II, Parliament asserted its authority, deposed the king and called in the Lancastrians to rule the country.

Premature experiment in subordinating the king to Parliament was made in the Lancastrian period, when Parliament nominated and controlled the council, which in its turn, controlled the king. But as the country had not yet developed a democratic consciousness, the experiment failed miserably. The weakness of the king brought upon the country the misery of the Wars of the Roses. The Tudors re-established peace and order and promoted the prosperity of the nation by setting up a strong central executive authority. But their successors, the Stuarts, failed to maintain the autocratic power in the face of the opposition of the nation which felt no necessity of tolerating despotism.

After the Glorious Revolution the legal powers of the king remained undiminished but gradually his executive power was handed over to the ministry responsible to Parliament. By the Act of Settlement the judges were made independent of the executive. For a short period George III was able to revive the powers of the Crown by means of Parliamentary corruption. But with the accession of Younger Pitt to power, George III's personal rule came to an end. At present the monarch is the ceremonial head of the State. It still serves many useful purposes. The monarch reigns, but does not rule.

## II. Means by which the Executive has been subordinated to the Legislature

The monarch is still formally the head of the Executive, Legislature and the Judiciary, but some means have been devised to make the Executive subordinate to the Legislature.

The Glorious Revolution struck a severe blow to the theory of Divine Right of kingship. The legislature, that is, the Parliament deposed James II, the representative of Divine Right monarchy, and gave the Crown to William III and Mary. This deviation of the line of succession to the throne assured the supremacy of Parliament. The Act of Settlement, which nominated the line of the Electress Sophia of Hanover to the ultimate succession, finally provided that the right to the throne depended on Parliamentary recognition alone.

The Mutiny Act provided that for maintaining and governing the standing army Parliamentary authorisation would be necessary every year. This Act secured the annual meeting of the Legislature.

The mode of supplying revenue to the king further subordinated the executive to the legislature. There was hardly any distinction between the Royal revenue and the national revenue before the Revolution. But Charles II and James II misused the revenue ; hence Parliament in the reign of William III attempted some definite limitation to the personal expenditure of the Crown. A definite sum was appropriated to the civil expenditure of the Crown. This sum is known as the Civil List. Up to the time of William IV the Civil List was appropriated not only to the personal expenses of the Court, but also to the salaries of ambassadors, judges and the civil service generally, together with all current pensions. But in the reign of William IV the sum voted by Parliament was relieved of all burdens except those immediately connected with the maintenance of the personal dignity of the monarch. On the other hand the king surrendered all those sources of revenue which had so long remained beyond the control of Parliament.

But it must not be supposed that the executive authority became subordinate to Parliament at a single stroke immediately after the Revolution. It was a long process helped by accidents. The development of the party system, which compelled William III and Anne to select ministers from one particular party made the ministers responsible to Parliament. George I could not speak English and George II did not take any interest in English politics. Hence the executive power fell to the hands of ministers. The long ascendancy of Walpole consolidated the principle of cabinet government. By the cumulative effects of all these devices the executive has been subordinated to the Legislature.

### III. Sovereignty of Parliament

The chief characteristics of the English constitution is the Sovereignty of Parliament. The Sovereignty of Parliament

may be exemplified by a reference to the three propositions, propounded by Mr. Dicey :—

(1) There is no law which Parliament *i.e.* the King-in-Parliament cannot make ; (2) There is no law which Parliament cannot repeal or modify ; (3) There is no marked or clear distinction between laws which are not fundamental or constitutional and laws which are ; (4) Parliament has the power to make any law it likes. It altered the succession to the Crown by the Act of Settlement in 1701. It changed the religion of England by the Act of Supremacy in 1534. It enacted a legislative union with Scotland in 1707 and with Ireland in 1800. These two Acts of Union fundamentally changed the constitution of the House of Commons and the House of Lords. The most striking instance of the omnipotence of Parliament is to be found in the passing of the Septennial Act in 1716. The Parliament which had been elected for three years in 1715 not only extended the duration of future Parliament from three to seven years, but also prolonged its own duration by four years by passing the Septennial Act. There is nothing to prevent a Parliament from making its existence perpetual from the legal point of view. The Septennial Act, according to Prof. Dicey “proves (1) to demonstration that in a legal point of view Parliament is neither the agent of electors nor in any sense a trustee for its constituents. It is legally the sovereign power of the State and the Septennial Act is at once the result and the standing proof of such Parliamentary sovereignty.” During both the world wars the duration of Parliament was extended beyond five years, though the Parliament Act of 1911 shortened it from seven to five years.

(2) Parliament can repeal any law it likes. It is impossible to limit the absolute sovereignty of Parliament even by passing laws declared to be unchangeable. Thus the permanence of the Established Church of Ireland was guaranteed by the Act of Union with Ireland. Yet the Irish Church was disestablished in 1869.

(3) In the constitutions of France and America a distinction exists between the Fundamental or Constitutional laws



and the Ordinary laws. The legislatures of these countries are not competent to change the Fundamental laws. But there is no such Fundamental law in the English constitution. Cromwell intended to draw a distinction between Constitutional or Fundamental laws and Ordinary laws.

The "Instrument of Government" did not provide any machinery, for constitutional amendment. The Parliament which met under the provisions of the "Instrument of Government" at once began to discuss the clauses of the "Instrument" with a view to altering it. Cromwell dismissed the Parliament, but no further attempt was made after his death to make the constitution rigid.

No other body in the State has any power of legislation independent of Parliament. In the U.S.A. the judiciary can declare some laws passed by the congress as illegal but in England what Parliament has enacted, the courts must apply. The Stuart kings claimed and exercised the power of making law by their prerogative authority. But the Glorious Revolution finally established the sovereignty of Parliament.

In legal theory each Parliament can make and unmake any law ; it can destroy by an ordinary statute the most firmly established convention and it can legalize past illegalities and thus reverse the decisions of the courts. It has been said that Parliament can legally provide for the execution of all babies who have got blue eyes. But Lord Cooper in his judgment over *Mac Cormick V Lord Advocate*, 1953, has observed that 'the unlimited sovereignty of Parliament is a distinctively English principle which has no counterpart in Scottish Constitutional law'. But even in England no Parliament would, in practice dare to do any such thing. The majority in Parliament are controlled by the Party in power and if it abuses its powers and acts in too arbitrary a fashion, it will surely suffer a defeat at the next election. Moreover, there is such a heavy pressure of business in Parliament in recent years that it has got no time to do any thing merely to demonstrate its supremacy. It is now delegating legislative authority to government departments and also delegating specific powers to local authorities and to public corporations of various kinds.

#### IV. Origin and History of the House of Lords till 1534

The origin of the House of Lords can be traced to the Commune Concilium, which in its turn may claim descent from the Anglo-Saxon Witenagemote. At the beginning of the Norman period there rested an obligation upon all the military tenants of the Crown to attend the Council. But by the time of Henry II a distinction between the greater and lesser tenants-in-chief made itself manifest. The greater tenants-in-chief received a personal summons to attend the King's Council, paid their feudal dues directly to the king's Excheques and brought their levy to the king directly ; while the lesser tenants-in-chief had to act through the Sheriff. This distinction was legalised by Clause 14 of the Magna Carta, which sanctioned the organisation of the Council on a feudal basis for purposes of taxation. The Council acquired additional power during the long minority of Henry III. The magnates of the realm had thus a corporate existence in a recognised assembly with definite duties before they were called in the Model Parliament of 1295.

The Model Parliament consisted of five distinct elements :—

(1) lay barons, (2) Spiritual Peers *i.e.*, Bishops and Abbots, (3) Knights of the shire, (4) representatives of the boroughs and (5) representatives of the lower clergy. Owing to the prevalence of general harmony between the different classes of people and to the elasticity of the character of the English Peerage the Parliament of England was not divided into five chambers or into three estates as was the case on the Continent. Early in the fourteenth century the lower clergy preferred to stand aloof and vote their contribution through their own clerical assemblies or Convocation. The spiritual peers being also great feudal lords and great-holders of land sat with the temporal lords. The knights of the Shire were drawn from the same social class as the greater barons, but they were not considered important enough to be called by separate summons. They were elected in the shire court and represented the shire. So they threw in their lot with the representatives of the cities and boroughs. Thus before the middle of the fourteenth century the lay barons and spiritual Peers combined to form a House of Lords and the knights and burgesses constituted a House of Commons.

## V. Early History of the House of Lords (up to 1534)

In the Model Parliament of 1295 there were 90 Spiritual Lords and 48 lay barons. The preponderance of the clericals continued down to the Reformation and hence in this period the House of Lords was largely non-hereditary in character. Every tenant-in-chief of the Crown was under a theoretical obligation of attending the King's Council in the Norman period. But Henry II began the practice of summoning the greater tenants-in-chief by issuing special writs. In other words *Barony by tenure* was superseded by *Barony by writ*. At first there was room for doubt as to who should be summoned by the king's discretion individually as greater barons, and who should be left to be represented with other lesser barons. But the theory gradually gained ground that a baron who had once been summoned by writ would be entitled to attend the Council ever afterwards and that his rights would descend to his descendants. The method of creating peers by *Letters Patent* came in vogue in the latter part of the fourteenth century and it gradually superseded the earlier method of creating *Barony by writ*. Dukes were first created by Edward III, Marquesses by his successor and viscounts in the fifteenth century. Besides Bishops, Abbots and the various grades of the lay peerage there were and are present in the House of Lords, judges and the great law officers of the Crown to give advice upon legal affairs. They are in Parliament but not of Parliament *i.e.*, they cannot vote.

The House of Lords had four functions :—Taxative, legislative, deliberative and judicial. (a) Originally the Lords possessed like the Commons and the Clergy the right of voting their separate aids to the Crown. But before Parliament was a century old it had become usual for Lords and Commons to combine in their grants. A new formula came into use in 1395, and it has been used with variation ever afterwards :—“Grants are made by the Commons with the advice and assent of the Lords Spiritual and Temporal.” In 1407 the Commons acquired the sole right of initiating taxation. Thenceforward the House of Lords began to *play a subordinate part in the control over national finance*.

(b) In legislation the House of Commons was originally inferior to that of the Lords. The assent of the Commons was not deemed essential to legislation until 1322. Even after that

date the Crown continued to enact statutes on the petition of Parliament. In the reign of Henry VI the modern process of legislation by Bill was substituted for that of legislation by petition. The Commons then acquired equal right with the Lords in matters of legislation.

(c) The House of Lords like the House of Commons had the power of deliberating on public policy and tendering advice to the Crown. This power exists even to-day.

(d) The House of Lords acts as the highest court of appeal over the action of the English courts. The Great Council was the highest court of appeal before the creation of Parliament and the right of hearing appeals was transferred to the House of Lords when it came into existence. It can hear appeal from the Courts of Common Law, Chancery and from the Courts of Scotland. It used to try great offenders against the State by process of impeachment. As a court of first instance it exercises jurisdiction over peers charged with treason and felony. Its judicial powers are not shared by the House of Commons. The House of Lords established its privileges by the sixteenth century, though they had to be confirmed later on. The Lords share with the Commons the privileges of (a) freedom from arrest, (b) freedom of speech, (c) freedom from jury service and (d) the right to commit persons to custody for contempt. Moreover, (e) every lord has the the right of individual access to the Crown and (f) of recording on the Journals of the House his formal protest against the decision of the majority. (g) The House of Lords has also the right of excluding unqualified persons from it.

## VI. History of the House of Lords from

1534 to 1830

- The introduction of the Reformation and especially the dissolution of the monasteries profoundly affected the constitution of the House of Lords. Two archbishops, 19 bishops, and 28 abbots, in all 49 spiritual lords and 36 lay lords sat in the House of Lords when Henry VIII ascended the throne. But as the effect of the dissolution of the monasteries the abbots lost their seat in the House of Lords in 1540.

Six new bishoprics were created at that date but one of them was dissolved in 1550, so the number of spiritual peers fell to 26. The Tudors created some lay peerages as the result of which the number of lay lords rose to 80 at the close of the Tudor period. Thus the predominance of lay lords over the spiritual lords was secured. The spiritual peers or bishops were practically the nominees of the king. The king thus exercised great power over the constitution of the House of Lords. The lay peerages have been lavishly created since the time of James I by Letters Patent. In the reign of Queen Victoria alone some 300 peerages were created. The number of peers in the House of Lords at present is about 790. The House became a predominantly hereditary body from the time of the Reformation as the lay peers are hereditary members of it.

A new element was introduced in the House of Lords by the Acts of Union with Scotland and Ireland. According to the Scottish Act of Union the Scottish peers were to elect sixteen peers to represent them in the House of Lords for a *single Parliament*. According to the Irish Act of Union the Irish peerage was to be represented in the House by twenty-eight representatives elected for *life*.

The House of Lords in conjunction with the House of Commons opposed the first two Stuarts up to the outbreak of the Civil War. But in 1642 a large number of peers went over to the king. In 1642 the House of Lords was abolished by the House of Commons "as useless and dangerous" to the people of England. It was restored with the Restoration in 1660.

After the Restoration, the House of Commons manifested unprecedented jealousy to the House of Lords in matters of taxation and exercise of judicial function. (1) In 1668 in the case of *Skinner Vs. the East India Company* the Lords claimed to exercise original jurisdiction. Skinner made

Conflict with the Commons  
(1660-1698)



a successful appeal to the Lords against the Company, who thereupon addressed a petition to the Commons. The Commons denied that the Lords possessed original jurisdiction. A violent quarrel between the two Houses ensued. But it was reconciled at the intervention of the king. The Lords have not exercised any original jurisdiction in civil actions since this time. (2) Again in 1675 broke out a quarrel between the two Houses in the case of *Shirley Vs. Fagg*. Shirley appealed to the House of Lords against the decision of the Court of Chancery. The Commons declared that the Lords had no appellate jurisdiction from the Court of Chancery. The dispute ended in the Lords retaining their right : (3) The House of Commons successfully protested against the claim of the House of Lords to initiate or amend money bills.

The House of Lords attained the zenith of its power in the period between the Revolution of 1688 and the Reform Act of 1832. The Revolution was mainly the work of the Whig aristocratic families ; so they monopolised power after the Revolution. The Crown was the only rival of the peerage in the 18th century. Queen Anne struck a blow at the omnipotence of the House of Lords by creating 12 new peers in one batch in order to facilitate the task of the Tories in concluding the Treaty of Utrecht.

The Earl of Sunderland introduced the Peerage Bill in 1719 and 1720 in order to stop such wholesale creation and to maintain the oligarchical character of the House of Lords. The Bill proposed that the peerage was never to exceed its existing number by more than six. The Crown was to have the right of creating one new peer for every peerage which became extinct. The effect of the Bill would have been to fix the number of the lay peerage permanently at about 200, but the Bill was defeated by the efforts of Walpole.

The progress of democracy in the 19th century relegated the House of Lords to a subordinate position.



## VII. History of the House of Lords from 1830 to 1949

During the 18th century the relation between the House of Commons and the House of Lords remained generally harmonious. The reason for this was that the great Whig Causes of conflict with the Commons. nobles by their command of political patronage were able to control the lower House. But the advent of democratic ideas in the 19th century made the House of Commons jealous of the Upper House. The House of Lords represented hereditary principle while the House of Commons was based on elective and democratic principle. The House of Commons demanded that its wishes, being the wishes of the people, should not be thwarted by a hereditary body. The House of Lords, on the other hand, believed that it was their right to revise the measures of the House of Commons. Thus a conflict was inevitable.

(1) The first struggle between the two Houses was fought over the first Reform Bill of 1832. The Bill though passed by an overwhelming majority in the House of Commons was thrown away by the House of Lords. To the Lords the measures seemed to strike at the very foundations of government. They were at last coerced by the threat of the king to create a fresh batch of nobles in order to outvote the opponents of the Bill. The Bill was accordingly passed by the House of Lords. But from that time the House of Lords was haunted by a suspicion that it existed on sufferance only.

(2) The next conflict took place in 1860 in connection with a proposal of Mr. Gladstone for the duties on paper. The proposal of repeal of paper duties was rejected by the House of Lords. Then Gladstone passed a series of resolutions in the House of Commons reasserting the rights of the Commons over taxation. One of the resolutions affirmed that the exercise of the power of rejection of a money bill by the House of Lords had not been frequent and so it was justly regarded by the House of Commons with peculiar jealousy as affecting the rights of the Commons alone to grant supply and to provide the ways and means for the service of the year. In 1861 Gladstone embodied

all the financial proposals of the year in one bill, so that the Lords had to choose between passing and rejecting the entire scheme of finance of the year. The Lords accepted the bill. By surrendering the initiative in financial measures, the Lords maintained power over general legislation only.

(3) The third conflict was over the Dis-establishment of the Irish Church in 1869, when the majority of the House of Lords was strongly opposed to the bill. A constitutional deadlock was avoided by the efforts of the Queen who induced the peers to give way.

(4) The Bill for the extension of the franchise in 1884 was rejected by the House of Lords on the ground that it did not include a scheme of re-distribution. Gladstone having decided to take that question in a separate bill. Gladstone declined to dissolve Parliament at the demand of the peers and a long political crisis followed in which the Queen played an important part as a mediator between the two parties. At last an arrangement was reached at, by which Gladstone agreed to communicate to the leaders of the Opposition the main principles of his re-distribution proposals.

(5) The next contest was over the Home Rule Bill of 1893 in which the House of Lords became victorious. The rejection of the second Home Rule Bill by the Upper House has been regarded as warranted by the general feeling of doubt and reluctance among the people. Gladstone had also to abandon the Employers' Liability Bill in 1894 owing to the opposition of the House of Lords.

(6) Thus there was a revival of the powers of the House of Lords. The Liberals got the majority in the House of Commons after the election of 1906, but the Upper House was mainly Conservative and Unionist in tendency. So the Lords resumed in full force the right of exercising suspensive veto. Between the years 1906 and 1910 the House of Lords

rejected five bills which the majority in the House of Commons regarded as of prime importance.

(7) One of these rejected bills was the Budget of 1909. The power of amending a money bill had been lost by the House of Lords, but not the power of rejecting a money bill. But the rejection of the Budget of 1909 brought the relation between the two Houses to a crisis. Parliament was specially dissolved and a general election was held in January 1910. The Liberal Party came out with a majority in the election. Resolutions were then passed in the House of Commons to limit the legislative veto of the Upper House. At this juncture King Edward VII died. Before that the Finance Bill had been passed by the Lords. For the time being the grave constitutional question of limiting the veto power of the Upper House was dropped. Conferences were held to settle the problem amicably, but all attempts failed. Then the Cabinet advised the king to dissolve the Parliament and at the same time asked the king to agree in case of a favourable election to create peers enough to carry the veto bill through the House of Lords. The general election left the relation of political parties unchanged. The House of Commons then passed the Bill for the limitation of the veto. The House of Lords introduced certain amendments, which were not accepted by the House of Commons. The House of Lords then passed the Bill under the threat of creating 400 new peers to overthrow the opposition of the existing Lords.

The Bill, known as the Parliament Act of 1911, provided that two classes of bill may become law without the consent of the House of Lords—money bills and other “public bills.” A money bill becomes an Act of Parliament if it is not passed by the Upper House within one month after receiving it from the Commons. Other public bills, rejected by the Lords in two successive sessions, if passed by the Commons a third time, shall become law in spite of the opposition of the House of Lords. But the passage of the bill through the House of Commons should occupy two years from the second reading in the first session. The life of House of Commons was reduced from seven to five years.

This Act has made the House of Lords distinctly inferior in power to the House of Commons. According to the Parliament Act, 1949 the House of Lords can delay non-financial legislation for one year only and not for two years as provided in the Act of 1911.

### VIII. Composition and Powers of the House of Lords after 1911

The House of Lords is composed of six classes of members. First, princes of royal blood, who have attained majority. Their number is usually two or three. Six Classes of Lords Secondly, hereditary peers, who form ninety per cent of the total number of members of the House of Lords. A peerage is conferred on a person who has shown eminence in any walk of life, or has contributed handsomely to the party funds. Thirdly, there are sixteen representative peers of Scotland, elected by some thirty-two purely Scottish peers at the beginning of each Parliament. Fourthly, there were twenty-eight representative peers of Ireland, elected for life. After the creation of the Irish Free State it was tacitly agreed that a vacancy occurring among this class of peers for Ireland would not be filled up. Now there is no peer belonging to this category, the last Irish peer having died in 1960. There are now 33 life peers, created under the life peerages Act, 1958. Of these 6 are women. Fifthly, the judicial business of the House of Lords is now transacted by the nine Law Lords, who are appointed for life, and who receive a salary for discharging the judicial function. Last of all, the Archbishops of Canterbury and York and the three bishops of London, Durham and Winchester receive summons by their own right, and twentyone other bishops are summoned out of the rest of 28 bishops in order of seniority of service.

At present there are more than 900 members of the House of Lords. But in 1509 at the death of Henry VII there were only 80 members. The number increased to 192 at the death of William III, to 309 at the end of the reign of Anne, to 339 in 1760 at the accession of George III, and 456 in 1837. Asquith recommended as many as 108 peers during the eight years of his

administration ; and Lloyd George recommended 115 during the six years of his Coalition Government. It is to be noted here that technically the monarch confers the peerage, but he does so on the advice and recommendation of the Prime Minister.

The House of Lords is the stronghold of wealth and the bulwark of the Conservative Party. The Lords seldom oppose

a bill put forward by a Conservative government. In 1936 as many as 543 out of 746 declared themselves supporters of the National Government which was dominated

by the Conservative Party. There were at that date only 16 peers belonging to the Labour Party and 56 peers adhering to the Liberal Party. The Conservative members of the second chamber are much more conservative and reactionary than the members belonging to the Lower House. The latter have to make a show of their solicitude for the welfare of the working classes, in order to catch their vote while the Lords are not responsible to anybody ; they do not care to conciliate the opinion of any section of the people, because they have not to depend on anybody's vote. The House of Lords can no longer be called the representative of the aristocracy of birth, because the number of merely wealthy persons, traders, manufacturers, brewers, distillers, is far greater than the number of the descendants of the ancient nobility of the United Kingdom. As almost all of them belong to the richer class, they are extremely suspicious of the socialistic programme of the Labour Party.

Though the total strength of the House of Lords is more than nine hundred yet rarely do more than 100 members care to attend it. Dr. Jennings states that the usual attendance is not more than 80 and Laski puts the attendance at 50 members. The official handbook, Britain 1958 informs us that "only a quarter of the members take an active part in the work of the House, although many more may attend on occasions when some matter in which they have a special interest is being discussed. During recent sessions the average daily attendance has been just under one hundred".

The House of Lords has lost much of the active control over many kinds of affairs in the state. No Powers of the House of Lords government thinks of resigning office on an adverse vote of the House of Lords. The Parliament Act of 1911 restricted its powers in several



important directions. Its power over Money Bills is virtually abolished by the following provisions of the Act : "if a Money Bill, having been passed by the House of Commons, and sent up to the House of Lords at least one month before the end of the session, is not passed by the House of Lords without amendment within one month after it is sent up to that House, the bill shall, unless the House of Commons direct to the contrary, be presented to His Majesty and become an act of Parliament on the royal assent being signified notwithstanding that the House of Lords have not assented to the bill". Whether a particular bill is a Money Bill or not is to be decided by the Speaker of the House of Commons. The Act defined a Money Bill as "a public bill which, in the judgment of the Speaker of the House of Commons contains only provisions dealing with all or any of the following subjects, namely, the imposition, repeal, remission, alteration or regulation of taxation ; the imposition for the payment of debt or other financial purposes of charges on the Consolidated Fund or on money provided by Parliament, or the variation or repeal of any such charges ; accounts of supply ; the appropriation receipt, custody or issue or audit of public money, the raising or guarantee of any loan or the repayment thereof, or subordinate matters, incidental to those subjects or any of them".

The Act of 1911 has also curtailed the legislative power of the House of Lords. If a bill, other than a Money Bill, is passed by the Commons in three successive sessions, whether of the same Parliament or not, and despite of its rejection by the Lords, it may on a third rejection by them be presented for the king's assent and on receiving that assent shall become a law, notwithstanding the fact that the House of Lords has not consented to the bill, provided that two years have elapsed between the second reading of the bill in the first of these sessions and the date on which it passes the Commons for the third time. The Parliament Act of 1949 has reduced the period of withholding of a Bill by the Lords to twelve months between the Second Reading of the rejected Bill in the first Session and its Third Reading in the second Session.

After the passing of the Parliament Act of 1911, scholars and the members of the Labour Party were apprehensive of the power that still existed with the House of Lords. Professors Laski and Keith have argued that because bills are not



enacted hastily, so the utility of the House of Lords as a chamber which allows sufficient time for reflection of the British nation, is negatived. Laski observes in his *Parliamentary Government in England* that "On the average, in our system, it takes nineteen years for the recommendations of a unanimous report of a Royal Commission to assume statutory reform; and if the Commission is divided in its opinion, it takes, again on the average, about thirty years for some of its recommendations to become statutes". He refers to initiation and adoption of such legislations as primary education between 1813 and 1870, secondary education between 1902 and 1936, Home Rule for Ireland between 1886 and 1914, Employers' liability (1837-1880) and some laws relating to divorce (1912-1937). The above-mentioned scholars believed that the House of Lords obstructed bills sponsored by parties other than the Conservative. The Lords particularly opposed the bills moved by the Labour party. Their partiality for the Conservative party is proved by the hasty acceptance of the Trade Disputes and Trade Unions Act, 1927 and Incitement to Disaffection Act, 1934.

But these instances do not mean that the Lords have always defeated or amended bills of the Labour party. It has to be admitted that the House of Lords not only amended the Labour Government's Iron and Steel Bill in 1949 and the Criminal Justice Bill on capital punishment in 1948, but also the Conservative Government's Transport Bill in 1953.

Even after the passing of the Act of 1949 the House of Lords exercises considerable power over Private Bills. Rejection by the Second Chamber at the time of second reading or on Preamble in committee leads to the death of the bill as the House of Commons does not revive it.

### IX. Functions and utility of the House of Lords

The Conference on the Reform of the Second Chamber, presided over by Lord Bryce in 1917-18 finds the following four great uses of the House of Lords :

"(1) The examination and revision of bills brought from the House of Commons, a function which has become more

needed since, on many occasions, during the last thirty years, the House of Commons has been obliged to act under special rules limiting debate.

“(2) The initiation of bills dealing with subjects of a practically non-controversial character which may have an easier passage through the House of Commons if they have been fully discussed and put into a well-considered shape before being submitted to it.

“(3) The interposition of so much delay (and no more) in the passing of a bill into a law as may be needed to enable the opinion of the nation to be adequately expressed upon it. This would be especially needed as regards bills which affect the fundamentals of the Constitution or introduce new principles of legislation, or raise issues whereon the opinion of the country may appear to be almost divided.

“(4) Full and free discussion of large and important questions, such as those of foreign policy, at moments when the House of Commons may happen to be so much occupied that it cannot find sufficient time for them. Such discussions may often be all the more useful if conducted in an assembly whose debates and divisions do not involve the fate of the executive government.” These debates are usually very good, because those who take part in these are generally men of experience, who do not speak merely for catching votes at the next election. As a corollary to the fourth function we may point out that the House of Lords is a ventilating chamber. It is an admirable arena for the discussion of those larger questions of public policy—questions of imperial interest or of social and economic reforms—which the House of Commons being absorbed in the exigencies of the passing hour, dismiss as irrelevant or academic.

(5) We may also add a fifth function of the House of Lords. It is thought to be a “reservoir of Cabinet Ministers.” By law, at least two of the Secretaries of the State and by convention, the Lord Chancellor must be selected from the House of Lords. No Premier, since the time of Lord Salisbury, has been appointed from the House of Lords. But some of the other ministers may be conveniently selected from the House of Lords. It is very difficult for a Cabinet Minister to administer a department and at the same time to attend regularly the

long sittings of the House of Commons. Some of the elderly statesmen prefer to be promoted to the Upper Chamber, because they find the strain of the House of Commons too much for them. Moreover, by conferring peerage the government can avail itself of the services of those quiet scholarly persons, who do not like to take the trouble of getting themselves elected to the House of Commons.

(6) The House of Lords is also the Supreme Court of Appeal for England and Northern Ireland. But the judicial functions of the House of Lords are exercised by the Lord Chancellor and the nine "Lords of Appeal in Ordinary", who hold life peerages and sit in the Upper Chamber as ordinary members. In Peerage cases and in the trial of peers accused of felony the House of Lords acts as a court of first instance. But the judicial functions of the House of Lords can be abolished and transferred to a separate body of expert judges without any inconvenience.

(7) Nearly half the local and private bills, concerning construction of tramways, minor railways, water works etc., are examined in a quasi-judicial manner in the first instance by committees of the House of Lords. If such bills are rejected by the House of Lords, the House of Commons does not support them. Thus the second Chamber relieves substantially the pressure of business on the Lower Chamber.

Though the House of Lords is troublesome for the Labour party, yet Herbert Morrison has paid due tribute to its legislative utility. As the House of Lords is composed on principles different from the House of Commons, the former looks at drafting imperfections and revises bills in a different spirit. Moreover, when specially Bills of substance and controversial Bills of legal complexity originate in the House of Lords, much of the time of the Commons is saved. So Morrison concludes that "it will be seen, therefore, that this two-way legislative traffic is not only valuable in ensuring good legislative revision and in bringing two types of mind to bear upon legislation, but almost certainly saves time and is helpful in preventing legislative congestion in the House of Commons. This is true even if we take into account the fact that the Commons have to consider and decide upon the Lords' amendments".

## X. Reform of the House of Lords

The existence of a hereditary Second Chamber, which is regarded as the "common fortress of wealth" side by side with a Lower House, representing the people, is nothing but a historical anomaly. The House of Lords is, as constituted at present, irrevocably wedded to the principle of the Conservative Party, and as such its discussions and decisions are vitiated by partisanship. It can use its delaying power effectively whenever it apprehends any danger from socialistic attacks on the wealth of its members. The cause of opposition of the Socialists to this Chamber has been thus admirably summed up by Sidney and Beatrice Webb : "Its decisions are vitiated by its composition—it is the worst representative assembly ever created, in that it contains absolutely no members of the manual working class ; none of the great classes of shopkeepers, clerks and teachers ; none of the half of all the citizens who are of the female sex ; and practically none of religious non-conformity, of art, science or literature". These charges are valid even to-day, excepting admission of women, who have been made Peers by Queen Elizabeth II. Most of the members of the House of Lords take little or no interest in political affairs.

The popular demand after the passing of the First Reform Act in 1832 had been to mend or end the House of Lords. But none excepting the Labour Party is in favour of abolishing the second Chamber altogether. Various schemes have been propounded from time to time to reform it. As early as 1869 Earl Russell introduced a Life Peerage Bill to empower the Crown to create 28 life peers. In 1884 Lord Roseberry moved for the appointment of a Select Committee "to consider the best means for promoting the efficiency of the House of Lords". He suggested the representation of the Churches ; of the professional, commercial and labouring classes ; of science, art and literature and of the colonies. In 1888 he renewed the proposal. In the same year Lord Salisbury introduced a bill empowering the Crown to appoint as life peers High Court Judges, Rear Admirals, Major-Generals, some meritorious members of the Civil Service and Privy Council, Governors etc ; but not more than five life peers were to be created in any single year.

A Conference on the Reform of the Second Chamber, appointed by the Prime Minister in August 1917, and presided over by Lord Bryce, recommended that the House of Lords should be a smaller body consisting of 327 members, besides the representatives of Ireland. The House of Commons, grouped according to thirteen regional divisions, was to elect three-fourth of the members, *i.e.*, 246 by secret ballot and proportional representation. The system was to be put in operation by

degrees, as no single House of Commons was to chose more than one-third of this number. The remaining 81 members were to be elected from the whole body of peers

by a Joint Standing Committee of the two Houses. Members of both the groups were to be elected for twelve year terms, and in each group one-third of the members was to retire every four years. As regards the powers of the reconstituted House, it was proposed that when there should be a doubt whether a measure was to be regarded as a money bill, the question should be settled, not by the Speaker of the House of Commons, but by a Joint Committee on financial bills consisting of even members elected by each House for the duration of a Parliament. When the two Houses could not agree on a bill, there should be a "free conference" consisting of twenty members of each House appointed at the beginning of a Parliament and ten members of each House added by the Committee of Selection on the occasion of the reference of any particular bill. The House of Lords was not to have the power of making and overturning ministries or of vetoing money bills. The proposals of the Conference were never voted. Other abortive proposals were suggested by Lord Birkenhead in 1925, Lord Cave in 1927, and Lord Clarendon in 1928.

In 1932 Lord Salisbury made certain proposals of reform with a view to create a Second Chamber strong enough to resist Socialism. According to his plan the House of Lords was to consist of some three hundred members, half of whom were to be elected for twelve years by the hereditary peerage and the remaining half nominated by the Government for the same period. The power of the Crown was to be so restricted as not to enable it to create more than twelve new peerages in a single year. A Joint Committee of both Houses under the chairmanship of the Speaker was to decide whether a bill was a finance

Plan of the  
Bryce Con-  
ference

Lord Salisbury's  
plan



bill or not. No further reform of the House of Lords was to be undertaken without the consent of the existing House of Lords. But the plan was not even assented to by the Conservative party unanimously and was rejected by the Labour party.

The Labour party formally adopted the policy of abolishing the House of Lords in 1934, when it was out of power. At the Annual Conference of the party in that year Mr. J. R. Clynes moved that "in our view the House of Lords is an institution which cannot well be reformed; it cannot be amended, it must be ended". But it seems that, subsequently the Labour party, having come to power modified this policy.

Plan of the Labour party : 1934

In the autumn of 1947 the Labour Premier, Mr. Attlee proposed certain restrictions on the House of Lords. The leaders of all the three parties agreed in 1948 to the following principles of reforming the second Chamber :—

Latest plan of reform

(i) The Second Chamber should be supplementary to, and not a rival to the Lower House.

(ii) The present right to attend and vote solely on hereditary qualification should be abolished.

(iii) The Second Chamber should have a membership of about 300, none of whom excepting certain descendants of the sovereign, should sit by right of heredity. The House of Lords should be so constituted that no party would be able to count on a permanent majority.

(iv) The Upper Chamber should consist of "Lords of Parliament of both sexes" appointed on grounds of personal distinction or eminent services rendered to the country.

(v) Its members should receive some remuneration for their services.

(vi) Some provision should be made for disqualification of a member of the Second Chamber who neglects or becomes no longer able or fitted to perform his duties as such.

But in working out the details of the scheme there appeared so much divergence in view that the question of changing the composition of the House was dropped. The Labour Govern-



ment introduced a Bill in 1947 seeking to reduce the suspensive veto of the House of Lords from two years to one year from the Second Reading of a Bill in the Commons.

Mr. Attlee admitted that the House of Lords has become an admirable revising chamber, because most of its members absent themselves and leave the work to fifty or sixty elder statesmen. But the Conservatives, when in Opposition, can use it for a different purpose. By throwing out an important bill after the first three years of the life of a Parliament they can force an election at any time during the last two years of the Parliament. The Labour party feels that it is intolerable that the hands of the Premier should be forced by the Conservatives in the House of Lords by the simple device of defeating any major measure passed by the Lower House in the last two years of its five years' span. The Labour Government argued that by reducing the delaying powers of the House of Lords from two years to one year its power of revision would be left unchanged and its dignity would be enhanced, since the power of a party machine to use it for purely tactical purposes will be curtailed.

There was a general agreement amongst the political parties that the House of Lords has evolved such an excellent procedure that it makes possible a freer and often a more objective discussion of long range problems of national and international importance than is possible in the House of Commons under modern conditions of party politics. The Select Committees of the House of Lords also render valuable services by examining technical matters arising from private and public bills. It was, therefore, decided in 1949 not to abolish the House. No change has also been introduced in the principle of its composition. The Labour Party found that the Lords did not prove as obstructionist to their policy as they had apprehended. The only change, therefore, introduced by the Parliament Act of 1949 was to reduce from two years to one the period for which the House of Lords could delay non-financial legislation.

The Conservative Government suggested reform of the Second Chamber at a preliminary inter-party conference in 1953.

But Mr. Attlee informed Mr. Churchill on 18 February, 1953 that as there was a fundamental difference of opinion between the Labour and Conservative parties on the power of the House of Lords, the Parliamentary Labour Party was of opinion that "no useful purpose would be served by our entering into such a discussion". So it appears that the public is not keen on either abolition or democratization of the House of Lords.

## CHAPTER X

### PARLIAMENT—THE HOUSE OF COMMONS

#### I. Functions of the House of Commons

The House of Commons is popularly known as the law-making body par excellence. But its law-making function did not assume the predominant position till the nineteenth century. Herbert Morrison has rightly pointed out that "Parliament was mainly useful to the King as an instrument for informing himself of what we should now call public opinion, and of obtaining, if he could, the assent of Lords and Commons to his policies ; and secondly, and increasingly, to his proposals for raising taxation. In return for this assistance Parliament for its part enjoyed the right of criticism and of ventilating grievances."

At present the functions of the House of Commons may be classified under the following heads :—

(1) Legislation (2) Financial policy and management of the public revenue (3) Administration and executive control (4) The discussion of abuse and the redress of grievances (5) "The testing and selecting of public men in debate and their appointment to ministerial offices." (Low)

(1) The most conspicuous function of the House of Commons is law-making. Parliament has devised a system by which no change can take place in the law without a most careful and detailed examination. Each bill in its passage has to pass through eleven stages ; a first reading, a second reading, a Committee stage, a Report of the Committee to the House, and a third reading. The bill has to pass through all these five stages in the House of Lords too ; and the assent of the king. But the Cabinet has over-shadowed the House of Commons as a law-making organ. "New laws are made by the Ministry with the acquiescence of the majority, and the vehement dissent of the minority, in the House of Commons". (Low).

(2) The second function of the House of Commons is the control of the State finance, the raising and the spending of money. The raising of money is done by a bill passed yearly, called the Finance Bill or the Budget. The House of Commons grants to each department the money for its expenses for one year. Money can only be spent by the department for the precise purpose for which it has been voted by Parliament.

(3) The third function of the House is to control the machine by which the country is governed. Every act of the executive can be challenged, approved or condemned by the House of Commons, and if condemned, it has to be changed. But the main function of the House of Commons is not to carry on the executive administration.

(4) The House can call attention to abuses and demand the redress of public grievances. This is done, firstly, by putting questions to ministers. If the House of Commons is dissatisfied with the answer on an important topic, any member may ask permission "to move the adjournment of the House on a matter of urgent public importance."

Thirdly, any member may have printed on the order paper a notice that he proposes to call attention to some matter of grievance or criticism and to move a resolution. Fourthly, the Leader of the Opposition may ask for a day to propose a formal vote of censure on the Government or on some important policy it has adopted. Lastly, the House of Commons can attack any suspected delinquencies of a department, while considering its demand for money. The last two methods are really formidable and if the Government is defeated in either case it is compelled to resign or to hold a fresh election. Thus the House of Commons is the 'grand inquest' of the nation and its main functions are to keep the Government fully in touch with public opinion, to ventilate grievances, to criticize and if it is found absolutely necessary, to remove the Government.

(5) The House of Commons is an admirable place for testing men for practical statesmanship. Here politicians of all degrees of capacity are exhibited to the country so that when men of ability are wanted they can be found, without anxious search or perilous trial. "The business of making a govern-

ment" observes Laski, "and providing it, or refusing to provide it, with the formal authority for carrying on the public business is the pivotal function of the House of Commons upon which all other functions turn."

## II. The Commons in the 18th century

The Revolution of 1688 resulted in the supremacy of the House of Commons. The Commons not only gained complete control over the raising of the revenue, but also over its expenditure. The evolution of the party system and the consequent growth of the Cabinet also raised the House of Commons to practical ascendancy in English politics.

The Commons evinced much jealousy against the Lords. They had restricted the power of the Lords over Finance Bills in 1671 and 1675. Not content with that, they tried to abrogate the co-ordinate authority of the Lords in the matter of ordinary legislation. They succeeded in achieving this object by *tacking* an ordinary bill whose rejection by the Lords was a foregone conclusion to a Bill of Supply. Thus they left to the Lords the unwelcome alternative of passing the obnoxious bill or of rejecting the necessary supplies. In 1702 the Lords stigmatized this practice as "unparliamentary and tending to the destruction of the Constitution of this Government."

The Revolution transferred political power from the monarch to the House of Commons. But the House of Commons did not represent the people. In the countries of England and Wales franchise was limited to those who had 40 shilling freeholds. In most of the boroughs members of the closed corporation alone had votes, so that in a large city like Bath there were only 36 voters. Many important towns like Manchester and Birmingham were altogether unrepresented, while some depopulated places enjoyed the right of sending representatives to the House. As the number of voters in a constituency was small, it was easy to buy up their votes. Thus corruption and bribery prevailed and the members of the House of Commons manifested an oligarchical tendency. The Acts of Union with

Scotland (1707) and Ireland (1800) increased the number of members of the House of Commons, but nothing was done to remove the anomalies of franchise and representation. The Scottish Union added 45 and the Irish Union 100 members to the House of Commons.

The House of Commons perverted its privileges to engines of tyranny. The privilege of freedom of speech was indeed essential for maintaining its liberty against royal encroachments. Secrecy of debate had to be maintained in order to preserve the privilege of freedom of speech. If words spoken in the Commons were reported to the King there could be no freedom of debate. But when the Commons gained a decided victory over the monarch, the House used the privilege to make itself irresponsible to the public. In the 18th century the House punished the printers, who tried to satisfy the public curiosity by publishing the reports of the House. In 1771 Colonel Onslow, a Member of the House of Commons made a formal complaint of several journals "as misrepresenting the speeches". Certain printers were in consequence ordered to attend the Bar of the House. Some appeared and were discharged after receiving a reprimand from the Speaker. In 1771 one printer named John Miller failed to appear and was arrested by the Messenger of the Commons. But Miller instead of submitting sent for a constable and put the Messenger into custody for an assault and false imprisonment. They were both taken before the Lord Mayor and Aldermen of London, who on the ground that the warrant of the Messenger was not backed by a city magistrate discharged the printer and committed the Messenger to prison. The Lord Mayor and Aldermen were put to prison by the Commons for their bold attitude. But henceforth the publication of debate was tacitly allowed.

• The Commons had the privilege of deciding all questions regarding the constitution of their own House and of settling disputed elections. But in the 18th century they turned this privilege against the voters.

Ashby vs.  
White

In 1704 Ashby, an elector of Aylesbury, brought an action against White, a returning officer, and Mayor of Aylesbury for refusing his vote, and obtained a verdict. This decision was reversed in the Court of Queen's Bench, but confirmed by the Lords in 1712. The Lower House remonstrated



against the action of Lords on the ground that the decision of the rights of electors lay with the Lower House. In 1705 five Aylesbury men brought action against the returning officer, but the Commons committed them for breach of privilege. The Aylesbury men won their case ultimately. But the highhandedness of the Commons reached its climax in the case of Wilkes, who being twice elected by the electors of Middlesex was twice expelled by the House of Commons. When he was elected for the third time the House gave his seat to his defeated opponent, Colonel Luttrell. Thus the House of Commons arrogated to itself the right of dictating to a constituency the choice of its representatives. There was a strong agitation against the House of Commons in the country and in 1782 the House had to give way and destroy all the records of the proceedings against Wilkes.

The House had also the privilege of punishing its members as well as outsiders for contempt of its orders and breach of its privileges. This privilege was also abused by the Commons, who even punished men for fishing in the pond of an M. P. for breach of privilege of the House of Commons.

The political system of England in the eighteenth century vested power in a limited class, and it is quite natural that such a privileged class would exercise it in its own interests. The land-owning class proved extremely selfish as is evidenced by the numerous land laws, game laws, enclosure acts and Corn Laws. The Parliament, dominated by this class of people, went so far as to place a bounty on the export of corn, whereby the community was taxed in order to deprive itself of food or make it dearer. The Corn Laws also kept the price of corn artificially high with a view to enabling the landlords to secure higher rents. The House of Commons was more anxious for securing its own supremacy over the law than for maintaining the reign of law. "It claimed authority," observes Pollard, "to decide by its own resolutions who had the right to vote for its members and who had the right to a seat. It expelled members duly elected, and declared candidates elected who had been duly rejected. It repudiated responsibility to public opinion as derogatory to its liberties and independence; it excluded strangers, and punished the publication of debates and division-lists as high misdemeanours. It was a law unto itself,

and its notions of liberty sometimes sank to the level of those of a Feudal Baron." It is because of this character of the House of Commons that the demand for reforming it became insistent from the last quarter of the eighteenth century.

### III. Causes of Agitation for Parliamentary Reform

New social and political influences, which appeared in the last half of the 18th century, began to give rise to democratic sentiment in England. (1) The writings of Theoretic idea of Rousseau and Voltaire were widely read in rights of people England and led some men to demand a truly representative government for the country. (2) The foundation of the United States had powerful effect upon the politics of England. The American people, belonging to the same race as the English, established a democracy without a King or nobility. This necessarily roused the democratic sentiment in England. (3) The success of the July Revolution in France in 1830 had profound and far-reaching effects on England. The bourgeoisie in England felt that while they were still subject to aristocracy, those in France were governing France. The working-classes in Britain thought that if the French workmen could defeat the Army why could not they repeat the tactics in England.

There were glaring anomalies in the representative system of England. These anomalies might be divided under two heads: (a) regarding qualification for franchise and (b) distribution of seats.

(a) An Act of 1430 restricted the franchise in the countries to persons holding free land or tenement to the value of 40 shillings a year. This Act remained in force up to the passing of the First Reform Act. The qualification for franchise provided by the Act was not high but it was extremely capricious. A leaseholder or copyholder no matter how valuable his interest, had no vote. Copyhold is a species of estate for which the owner can show by way of title only the copy of the rolls originally made by the Steward of the Lord's Court. This species of tenure had its origin in the ancient villeinage tenure. Moreover, the number of freeholders had enormously decreased in the 18th century owing to the absorption of many freeholds

into large estates. Thus the franchise in the counties was confined to some big landowners. The anomaly in the boroughs was more glaring than in the counties. The qualifications for franchise varied from borough to borough. In many boroughs the persons entitled to vote were the freemen, that is the members of the Municipal Corporation which had been created by Charter. In some boroughs the right to vote was restricted to the governing body, often a small knot of aldermen, who elected their own successors.

(b) Distribution of seats was very imperfect and unequal, almost every borough and county, irrespective of its size and population had the right to send two Members to the House of Commons. The number of members from boroughs was far in excess of that from counties. Moreover, many boroughs had dwindled in importance and population since their creation, yet the decayed Boroughs retained their ancient privilege of sending members to Parliament, while the towns that had subsequently sprung up were left entirely without representation. Thus Old Sarum, an ancient town which had not a single inhabitant was represented in the Commons by two Members. Furthermore, the Sovereign, for the purpose of gaining influence in the Commons, had from time to time, given unimportant places the right of returning members to the House of Commons. Elections in these small or "Pocket Boroughs" as they were almost always determined by the corrupt influence of the Crown or the great landowners. At the same time, such large, recently grown manufacturing towns as Birmingham, Leeds and Manchester had no representation at all in the Commons. Nearly half the members of the House of Commons were nominated by the big landlords.

The Industrial Revolution created a vast population, which was hardly represented. The long Napoleonic War, bad harvests and an unsound Corn Law had inflicted so much suffering upon this population, that they thought political franchise to be the panacea for all evils. The farmers and the working classes joined in the movement for reform. By 1830 Cobbett became the leader of these classes. Moreover, the capitalists, clerks, shopkeepers and Dissenters joined in the cry against 'borough-mongers'. Of all the sections, only the clergies of the Church

were opposed to the reform of Parliament. By 1830 everything was ready for a Revolution in the Parliamentary system of England.

#### IV. History of Agitation for Parliamentary Reform

The origin of agitation for Parliamentary reform may be traced to the last decade of the seventeenth century. The abuses of the rotten borough system induced the Philosopher Locke to denounce the absurd system in 1690. The first man to move the question in the House of Commons was Sir Francis Dashwood, who in an amendment to the Address from the King claimed for the people the right to be freely and fairly represented in Parliament (1745).

In the reign of George III the question was hotly debated. He wanted to revive the power of the Crown by influencing the members; so the farseeing men began to realise the necessity of disfranchising the rotten boroughs. Moreover, the quarrel with the American Colonies, awakened in the mind of the unrepresented towns the desire to insist on the principle, "no representation without taxation." In 1766 Chatham advocated unsuccessfully a measure for disfranchising corrupt boroughs and adding their membership to that of the counties. In 1776 John Wilkes "proposed a motion which contained all the leading principles of parliamentary reform adopted during the next fifty years." In 1780 a Society for Constitutional Information was organised under the patronage of Cartwright, Horne Tooke, and others. In 1780 the Duke of Richmond demanded in a Bill annual Parliaments, universal suffrage, equal electoral districts, the abolition of the property qualification of Members of Parliament, payment of members and vote by ballot. Between 1782 and 1785, the Younger Pitt brought forward no less than three measures all of which were thrown out. In 1792 the Society of the Friends of the People was formed for promoting the movement; but Burke and Pitt being afraid of revolutionary excesses in France, opposed it. Charles Grey introduced several bills between 1793 and 1797 but all were defeated. The cause was still further prejudiced when the Radical, Burdett, took it up in 1809 and proceeded, during the next few years, to demand universal suffrage, annual Parliament, equal electoral districts, and vote by ballot. In 1819 Lord John Russell introduced a motion for moderate reform;

but as he belonged to Whig Party and the Tories were in power at that time, the motion was overthrown. Up to 1830 he managed to keep the question to the front in the House of Commons.

## V. The First Reform Act

The French Revolution of 1830 gave a new impetus to the reform movement in England. The unenfranchised middle class and the poor factory workers made strong demonstration for getting political franchise. The death of George IV led to a general election in which the Tories were defeated and the Whigs came to power in 1830. Lord John Russell introduced the First Reform Bill in 1831. Though the second reading of the bill was carried on in March by a majority of one, the bill was defeated in Committee. At Lord Grey's request the King dissolved the Parliament and a strenuously fought election returned a Whig majority.

The Second Reform Bill was passed this time by the House of Commons by a majority of 100, but it was rejected by the House of Lords.

A Third Reform Bill was introduced at the end of the year and being passed by the Commons was read a second time in the House of Lords. But when an attempt was made to amend the Bill in Committee of the House of Lords, the Cabinet resigned. The Tory leaders were unable to form a ministry. The King was, therefore, obliged to call back Lord Grey, to whom he gave written permission "to create such a number of Peers as will be sufficient to ensure the passing of the Reform Bill." The Duke of Wellington at the King's request, used his influence to persuade the Peers to abandon a resistance that could only be useless. The Lords gave way and the First Reform Act was passed in July, 1832.

The Act disfranchised 55 boroughs returning two members each and one returning one. These 56 boroughs, contained less than 2000 inhabitants. Thirty boroughs, with less than 4000 inhabitants lost a member apiece, and one four-member borough lost two. Its provisions in England and Wales 130 seats were available for distribution. 66 of them were given to new boroughs and 64 to the new



counties. The number of counties was raised from 95 to 159. The total number of members was fixed at 658. (2) In boroughs the £10 householder became the unit of electoral system. (3) In counties franchise was given to (a) £10 copyholders and (b) long leaseholders (c) and tenants-at-will rented at £50 a year in (d) addition to the ancient 40s. freeholders.

## VI. Effects of the First Reform Act and Character of the Reformed House of Commons

The Reform Act of 1832 did not introduce complete democracy. Like the Revolution Settlement of 1688-89 it was based on compromise and not abstract principles. Its object was to reform the most glaring anomalies and abuses prevailing in the then Parliament. It abolished the rotten boroughs and gave representation to twentytwo large towns, including some London districts. But it did not divide the country into equal or approximately equal electoral districts. The Act transferred the electoral power which previously resided in a privileged section of the landlords to the landlords and a fraction of the middle class. The middle class was by no means enthroned in power. The influence of the landholders over counties increased as a result of open voting system. As the Ten Pound household franchise was not promulgated in counties, half of the middle class were without votes. Out of a population of 24 millions, less than one million exercised the right of franchise. So the unenfranchised middle class joined the ranks of the vast body of working men in the agitations for further parliamentary reforms.

The actual change brought by the first Reform Act was small. Bribery, under influence and preponderance of a feisured class did not disappear immediately. The landholders were still the leaders of the society. Even for a generation after the Reform Bill, the members of the Parliament stared at men like Cobbett, Cobden and Bright who were not country gentlemen, yet there were far-reaching changes. The landlords realized that they could no longer check the process of democratization of the parliament. The House of Lords had to give way to the popular will. The Act established the 'sovereignty of the people' in fact, if not in law. Prof. Dodd



(in *The Growth of Responsible Government*) informs us that three new tendencies emerged as a result of the passing of the Act, namely (a) the gradual emergence of a new type of constituency based on number rather than on corporateness (b) promotion of a tendency towards political elections and (c) conception of an election as a contest between rival political parties rather than rival family groups. The Chartists demanded by 1839 the formation of equal electoral districts on the basis of equal population. They also demanded universal manhood suffrage, vote by ballot, annually elected parliaments, abolition of property qualification and payment of salary to members of the Parliament. The enumeration of voters was first done by overseers of the poor. But soon 'registration societies' cropped up in different constituencies to register the names of voters and point out omissions in the voters' list. As years rolled on the election business was taken up by political parties. Soon the political parties came out with their manifestos and the contestants for membership of parliament attached themselves to parties and ceased to be spokesmen of their respective areas.

The First Reform Act diminished the system of patronage and nomination to rotten borough seats so long exercised by the King. It thus deprived him of the chief means of influencing the composition of Ministries. The loss of power of the Monarch led to the independence of the Cabinet and the supremacy of the Prime Minister.

An indirect effect of the passing of the Reform Act was to increase the jealousy between the House of Commons and the House of Lords. The latter represented the hereditary principle while the House of Commons was now based on elective and democratic principle. Henceforth the House of Lords was haunted by the suspicion that it existed on sufferance only.

The introduction of the Reform Act also led to the appointment of a series of Royal Commissions on socio-economic matters. The Whigs earned the gratitude of the nation by passing the Emancipation Act in 1833 which set free all slaves in the British Empire, the Penny Postage Act in 1839 and the first step towards national education by a grant of £20,000 to the building of schools. The fall of the 'rotten boroughs' in 1832 involved the fall of the Municipal rotten corporations.

The administration of municipalities before 1835 was in the hands by a group consisting of attornies, doctors, retired officers, and some Whig grandees. The functions of a modern municipal corporation were then often entrusted to some temporary bodies to deal with lighting, drainage, water, police etc. The English Municipal Corporation Act of 1835 did away with many of these abuses. Excepting London, all principal towns began to be served by municipal bodies elected by ratepayers themselves. Every new municipality was allowed to levy a local rate and gradually to resume those functions which had been previously handed over to *ad hoc* local bodies. But this Act unfortunately divided Victorian England in two opposite social systems, "the aristocratic England of the rural districts and the democratic England of the great cities. The counties and the market towns were still ruled and judged by country gentlemen to whom all classes bowed. But the cities were governed by a totally different type of person, in accordance with a very different scale of social values which, whether middle or working class, were essentially democratic".

Both the Whigs and Tories, moved by a sense of humanity, reformed the church. As a result of the Ecclesiastical Commission, parliamentary enactments in 1836 and 1840 the abuses in distribution of endowments were removed. The clergies themselves worked to create churches in industrial districts and imparted primary education by voluntary subscriptions. The Marriage Act of 1836 permitted marriage ceremonies in Catholic or Protestant dissenting places of worship, provided the Registrar had been informed earlier. The Act also led to the creation of officers called Registrars of Births, Deaths and Marriages. The humanitarian attitude of a generation after 1832 can also be seen in the passing of Lord Althorp's Factory Act of 1833 and another legislation in 1847. The first Factory Act prohibited the employment of children below 9 and the working hours for children between nine and thirteen at nine hours per day. It also prescribed 69 hours a week for young persons. The Act of 1847 lowered the working hours to 58 hours a week for young persons and women. The Poor Law Act of 1834 stopped outdoor relief unless able bodied persons came to workhouses. Thus the Reform Act of 1832 broke the sanctity of the Revolution Settlement by passing legislation on Church, parliament and local government.

## VII. History of Parliamentary Reform 1867 to 1949

The Representation of the People Act of 1867 was a great step in the direction of democracy. But it was not introduced and amended with forethought and deliberation. The Bill was introduced by Disraeli in 1866 but it was so much amended in its process through the House of Commons, that it almost ceased to be his or anyone else's and became a sheer "leap in the dark".

The Act disfranchised 51 boroughs totally and 38 boroughs with less than 10,000 population lost one seat each. With the 52 seats thus obtained 12 new boroughs were created. Universities of London, Edinburgh and Glasgow were given seats, and additional members were given to some large towns and counties. The number of borough members was reduced from 323 to 286 and that of county members was increased from 144 to 172. In country constituencies the forty-shilling freehold franchise was maintained, but the qualification of copyholders and leaseholders for franchise was reduced to half of their former qualification. A new £12 householder was added and this made conditions easier for the tenants-at will. The most important changes, however, were made in the qualification of borough franchise. The old qualification of £10 householder was struck off and all "lodgers" who occupied for a year, rooms of an annual rental value, unfurnished, of £10 or over were admitted to vote. By the First Reform Act the franchise had been extended in England and Wales to 217,386 and in the whole of the United Kingdom to some 455,000 persons. By the Second Reform Act the urban working class was enfranchised and the electorate was increased by almost a million. Prof. Hearnshaw calls it "the most revolutionary of all the Reform Acts prior to that of 1918". It put an end to the rule of the landlord class. Government was henceforth conducted in the interests of the masses and not of the classes. Enlargement of the electorate necessitated the introduction of compulsory primary education and the extension of party organisation to local areas.

The Representation of the People Act of 1884 extended the household franchise and lodger franchise to the counties thus making the county and borough franchise similar. The rural agricultural labourers were enfranchised as the effect of this Act.

The result of the Act was to increase the number of voters by nearly four millions. The Redistribution of Seats Act of 1885 almost introduced the principle of equal electoral districts. Now The Third Reform Act 1884 boroughs and counties with less than 50,000 population returned 1 member to the Parliament, those between 50,000 and 165,000 returned two members and thereafter for each additional 50,000 population another additional member was elected for the House of Commons.

The Fourth Reform Act of 1918 swept away the old property qualifications. It entitled a man to be registered as a parliamentary elector for a constituency (other than a university constituency) provided he is at least 21 years old and has requisite residence or business premises qualification for six months. The Fourth Reform Act 1918 Business premise means occupation of land or other houses or tenements of the yearly value of not less than £5 for business, profession or trade purposes. The Act allowed also a man or woman who received a degree, scholarship or fellowships in a university to vote as a parliamentary elector for a university constituency. The most novel feature of the Act was the enfranchisement of women over thirty years of age, and if they were registered as a local government elector in respect of the occupation of a dwelling house of any value in the constituency or of lands or premises of not less than £5 annual value or in the case of a wife if her husband was entitled to be registered as a parliamentary elector. The persons who served in the air, navy or land forces could become voters, and for these the residential qualification was for only one month. The Act gave one member to every 70,000 electors. The constituencies were usually single-member, excepting ten boroughs in England, three counties in Northern Ireland and the universities. The number of the members of the House of Commons, as a result of the passing of the Act was to be 602. (Viz. 299 divisions from boroughwise constituencies, 292 divisions from county constituencies and 11 divisions from university constituencies).

The Representation of the People (Equal Franchise) Act, 1928, provided equal qualifications for men and women. A man or woman was entitled to be registered as a parliamentary elector for a constituency if he or she was 21 years of age. Other qualifications for a voter remained the same as that of 1918 Act.

The Representation of the People Acts, 1948 and 1949 established the principle of one man one vote by abolishing the University seats and the business vote. For the first time in British history, members of the armed forces, Crown servants of the United Kingdom employed overseas, and the wives of such persons if resident overseas with their husbands, were allowed to vote by proxy. Voting by post or by proxy was allowed in cases of illness or engagement in such work which prevented a person from casting vote. Changes in the boundaries of constituencies were made in 1951 and 1955. In 1951 and 1955 there were 625 and 630 members respectively of the House of Commons. In 1955, and 1961 there were 511 members for England, 36 for Wales, 71 for Scotland and 12 for Northern Ireland.

### VIII. The Electoral System

The House of Commons (Redistribution of Seats) Act, 1949 has effected a redistribution of constituencies in the United Kingdom. Each constituency now returns a single member and in 1955 there were 630 members in the House of Commons. The Act set up four permanent boundary commissions—for England, Scotland, Wales and Northern Ireland—under the chairmanship of the Speaker, to effect further redistribution periodically. The number of constituencies in Scotland must not be less than 71, in Wales not less than 35. The total number of constituencies for Great Britain must not be substantially greater or less than 613 and for Northern Ireland it must be 12.

All men and women who have attained 21 years of age and are not subject to any legal incapacity to vote and who are either British subjects of the Irish Republic are entitled to be included in the register of electors for the constituency in which they were residing during the last three months. The electoral register is published on the 15th of March every year. No one is allowed to exercise his franchise in more than one constituency. Members of the Armed forces, Crown servants employed abroad, and wives of members of the Armed forces and such Crown servants if residing abroad be with their husband are entitled to send their votes by post. Others must



personally go to the polling booth to cast their ballot papers in to the ballot box.

There is no special qualification for membership of the House of Commons. But no one under 21 years of age can be a member. Government contractors, Sheriffs, Ordinary Civil servants, Clergymen of the Church of England, Ministers of the Church of Scotland and Roman Catholic Clergymen and English and Scottish Peers are disqualified from sitting as Members of the House of Commons. A candidate need not be a resident of the constituency he desires to represent. This saves the members from localism or a parochial outlook.

Before 1911 Members of the House of Commons did not receive any salary. In August, 1911 a salary of £400 per year was provided for the first time for each member excepting those who receive salaries as Ministers, or officers of the House or as officers of Her Majesty's household. From May, 1946 the salaries of members have been increased to £1,000 per year.

It has been estimated by Dr. Jennings that a Conservative candidate had to spend £1,500 a year for nursing the constituency and another £8000 at every election. But Ross pointed out that on average each Conservative candidate spent £778, Labour £697 and Liberal £459 on election in 1951 (Political Quarterly, 1952, p. 178). In the past a considerable number of Conservative candidates paid most of their election expenses. But now the Conservative party does not allow any of its candidates to contribute more than £25 a year to his constituency association. A Conservative M.P. is forbidden to contribute more than £50 a year to the party fund. The election expenses for a candidate are the liability of the constituency association. Similarly the Labour Party has made a recent rule that the election expenses would be borne by the constituency parties. An individual or an organisation is not allowed to contribute more than £200 a year in a parliamentary borough for organization and registration purposes to a constituency of the Labour Party. Moreover, when a trade union sponsors a candidate, it is allowed to contribute not more than 80% of the sixty per cent of the maximum expenses



allowed by the Act of 1949. Such restriction on the trade unions was made in order to prevent the unions "from swamping the initiative and independence of the divisional labour parties". No such regulations regarding individual candidate's contributions are made in case of Liberals and minor parties at the time of election. The result of these restrictions are noteworthy. At present a poor man can be a Conservative candidate, but only a rich person, if not supported by a trade union, can seek the nomination of the Labour Party. The Representation of the People Act, 1949, has set a severe limit on the use of motor-cars in elections and on election expenses. It permitted a candidate for Parliament to spend £450 in country or borough constituencies plus 2d. per elector in borough and 1½d. in county constituencies.

The electoral system of the United Kingdom is based on single-member constituencies and simple majorities. It often happens that the number of seats won by the victorious party at an election is proportionately larger than the number of votes cast in support of its candidates. An analysis of the votes cast in some of the recent General Elections will illustrate this :—

1929	Conservatives	Liberal	Labour	Others
Votes cast	8,561,579	5,220,577	8,306,477	3,020,700
Candidates returned	254	57	288	7

The Labour Party secured less number of votes than the Conservative Party, but won 34 more seats. The Liberal Party secured more than half the votes cast for either of the two other major parties, but got only one-fifth of the seats won by these.

1931	National Govt.	Independent Liberal	Labour	Others
Votes cast	14,423,517	93,640	6,642,230	129,058
Candidates returned	521	4	52	Nil
1935	National Govt.	Liberal	Labour	Others
Votes cast	11,570,179	1,477,314	8,300,627	99,124
Candidates returned	427	21	154	9

In this election the Labour Party secured more than 75% of the votes cast for the National Government, but won only 30% of the seats in comparison to those won by the National Government.

1945	Conservatives and National	Liberal	Labour	Others
Votes cast	9,960,809	2,239,668	11,992,292	780,538
Candidates returned	213	12	393	22

The seats won by the Labour Party were much higher than the proportion of votes secured by them.

1950	Conservatives and associates	Liberal	Labour	Others
Votes cast	12,503,010	2,621,489	13,366,498	380,395
Candidates returned	298	9	315	3

The election of 1950 showed that while the average votes for an M. P. belonging to the Liberal Party was 291,600, that belonging to the Labour Party was 42,100 and that to the Conservatives 42,200.

1951	Conservatives and associates	Liberal	Labour	Others
Votes cast	13,724,418	730,551	13,948,385	177,329
Candidates returned	320	6	295	3

1955	Conservative & supporters	Labour & supporters	Liberal	Others	Communiests
Votes cast	13,310,418	12,405,254	722,402	288,038	33,144
Candidates returned	346	277	6	0	0

1959				
Votes cast	13,750,965	12,216,166	1,640,761	Independent
Candidates returned	365	258	6	1

In 1930 the Ullswater Conference on Electoral Reform suggested Alternative Vote and Single Transferable Vote or

Proportional Representation as remedies for this state of things.

Proposals for Reform      The Alternative Vote means that the voter instead of simply putting a cross against the name of his favourite candidate will place the candidates in order of preference. If no candidate is able to secure an absolute majority, the first preferences given for the lowest candidate would be ignored, and the second preferences will be considered. Suppose, for instance, that in counting only the first preferences the following result has been obtained :—

A (Conservative)	25,000 votes
B (Liberal)	20,000 votes
C (Labour)	15,000 votes

If 10,000 of the Labour voters had given their second preference to the Liberal candidates, 2000 to the Conservatives and 3,000 had not given a second choice at all, the result would be on the second count :—

B 20,000 plus 10,000 =	30,000
A 25,000 plus 2,000 =	27,000

Thus, instead of the Conservative candidate the Liberal candidate would be elected. But the adoption of this method will give rise to bargains between the parties and the candidates before election and would secure the election of candidates who are not approved by the largest number of voters, but candidates who are not seriously objected to, as second preferences really mean.

The adoption of Proportional Representation requires a multi-member constituency. It would secure the separate representation of minorities indeed, but that would mean a progressive disintegration of political parties. A multi-party system makes coalition government inevitable and coalition governments are notoriously unstable. The great advantage of the existing method of election is that it associates power with responsibility. Every voter has the responsibility of determining the main issues of policy and of deciding who should be as to entrusted with the supreme conduct of national affairs. This purpose can not be achieved by the Alternative Vote or Proportional Representation which are calculated to produce inconclusive results. It is for this reason that the Representation of the People Acts of recent years have not introduced any significant change in the electoral system.

## IX. The House of Commons and Government

The House of Commons controls the Government of the day. The Government is responsible to the House of Commons in the real sense of the term. The House of Commons does not indeed initiate the legislative or financial measures ; nor even does it mould them in any substantial way. But it performs the important functions of ventilating the grievances, extracting information from the Government, and educating public opinion through debates. Any grievance, whether of executive interference with personal liberty or taxation or harassment may be complained of and discussed in the House of Commons. When a grievance is voiced, against a particular department, the Minister in charge of that department feels as if he is on trial. He tries to justify the conduct of his subordinates as best as he can and tries to avoid doing the thing complained of in future. "A Government", writes Laski, "that is compelled to explain itself under cross-examination will do its best to avoid the grounds of complaint. Nothing makes responsible Government so sure. Where this power is absent, the room for tyranny is always wide ; for nothing so develops inertia in a people as the inability to formulate grievance, and to see that its redress is passed upon the central source of power. This, at least, the House of Commons secures". Questions to Ministers not only brings the work of the departments under their charge into the public view but also sometimes reveal their defects. The House of Commons also appoints committees on certain occasions to investigate into the defects and shortcomings of the Government. The report of such committees have often brought about important changes in the social and economic condition of the country.

- A General Election in the United Kingdom really decides which Government is to be installed in power. The electors vote not so much for this candidate or that candidate but for this Government or that Government. The leader of the party or the coalition of parties which secure the majority of seats is called upon to form the Government. Those who belong to the Government party do not usually vote against the Government because that may mean helping the Opposition

to come to power. Moreover, the Prime Minister may ask for a dissolution of the House and having obtained it may appeal to country in a general election. In that case the members of the Government will have to run not only the trouble and expenses of election but also the risk of losing the seat. These considerations weigh with the members of the Government party in lending their support to the Government. The defeat of the Government with a majority is very rare; defections from the party have not caused the fall of any Government in the present century. It has been well said that "the majority votes for the Government in the general election and therefore the Government controls the majority; and because the Government controls the majority it insists on the votes of its majority".

But it should be noted that in spite of rigid party discipline no party from 1832 to 1950 has held office continuously for more than ten years. The conservative party, however, has been in office since 1951. The change of Government has been due to the change in the state of public opinion. This is why the Government is so sensitive to the opinion of the general public. If the faithful members find that any act of government threatens to lose votes in the next election, they do not attack the Government on the floor of the House; but they speak out their mind to the Party Whip in the smoking room. The Government makes it a point to learn the direction of its supporters' mind. The Government seldom persists in pursuing a policy which appears to be unpopular, because it is afraid of losing its majority at the next election. The National Government had an overwhelming majority in the House of Commons between 1934 and 1937, and yet Mr. Ramsay Macdonald had to give way on the Unemployment Assistance Regulations in 1934; Mr. Baldwin had to sacrifice Sir Samuel Hoare in the Abyssinian crisis of 1935 and Mr. Chamberlain had to give way on his National Defence Contribution of 1937. Mr. Churchill and Mr. Attlee have changed the personnel of his ministry several times with a view to placating public opinion.

Actual duration  
of House of  
Commons  
Edward VII :—

The following table will illustrate the actual duration of the House of Commons in the twentieth century since the accession of

Reign	When met	When dissolved	Duration Y. M. D.		
Edward VII	13- 2-1906	10- 1-1910	3	11	24
Edward VII and George V	15- 2-1910	28-11-1910	0	9	13
George V	31- 1-1911	25-11-1918	7	9	25
do.	4- 2-1919	26-10-1922	3	8	22
do.	20-11-1922	16-11-1923	0	11	27
do.	8- 1-1924	9-10-1924	0	9	1
do.	2-12-1924	10- 5-1929	4	5	7
do.	25- 6-1929	24-10-1931	2	1	29
do.	3-10-1931	25-10-1935	3	11	22
George V, Edward VIII and George VI	26-11-1935	15- 6-1945	9	6	20
George VI	26- 7-1945	3- 2-1950	4	6	9
do.	1- 3-1950	5-10-1951	1	7	4

During the last 56 years, 19 governments held power under 11 Prime Ministers. Of these 2 were Liberals, 6 Conservatives, 4 Labour and 8 Coalitions as the following chart will show :—

Prime Minister	Party	Date of forming the Government
1. Sir H. Campbell-Bannerman	Liberal	5 Dec., 1905
2. H. H. Asquith	Liberal	8 April, 1908
3. H. H. Asquith	Coalition	25 May, 1915
4. D. Lloyd George	Coalition	5 Dec., 1916
5. A. Bonar Law	Conservative	23 Oct., 1922
6. S. Baldwin	Conservative	22 May, 1923
7. J. R. MacDonald	Labour	22 Jan., 1924



Prime Minister	Party	Date of forming the Government
8. S. Baldwin	Conservative	4 Nov., 1924
9. J. R. MacDonald	Labour	5 June, 1929
10. J. R. MacDonald	National	25 Aug., 1931
11. S. Baldwin	National	7 June, 1935
12. S. Baldwin	National	26 Nov., 1935
13. N. Chamberlain	National	28 May, 1937
14. W. S. Churchill	National	10 May, 1940
15. W. S. Churchill	National	23 May, 1945
16. C. R. Attlee	Labour	26 July, 1945
17. C. R. Attlee	Labour	6 Mar., 1950
18. W. S. Churchill	Conservative	26 Oct., 1951
19. A. Eden	Conservative	20 Mar., 1955
20. H. Macmillan	Conservative	Since 1957

#### X. Parliament since 1914

Parliamentary Government in England in normal time is carried on by discussions, in course of which the Opposition does not miss any opportunity to discredit the Government. But a war demands cessation of party strife and the presentation of united front to the enemy. The exigencies of war require electoral truce also.

Parliament backed up by the whole nation in 1914 as well as in 1939 was unanimous on the need of declaring war on Germany. Before the declaration of the War of 1914 a bitter strife was going on between the Liberals and the Conservatives on the questions of the Irish Home Rule, the disestablishment of the Welsh Church and the curtailment of power of the House of Lords. But as soon as the war was declared, the party strife came to an end and the Conservative Opposition gave support to the Government till May 1915, when a Coalition Government was formed. Similarly, on the outbreak of the war of 1939, Mr. Chamberlain offered representation in the War Cabinet to the Labour Party and representation in the Ministry to the Liberal Party. These offers were not accepted, indeed, but these Opposition parties ceased to oppose till May, 1940. The three parties agreed in 1938, as in 1914, not even to oppose each others' candidates at bye-elections.

But the cessation of party strife did not mean the installation of dictatorial government. The Opposition did not oppose measures relevant to the prosecution of the war, but special problems, such as those of food supply, manpower, shipping, propaganda etc., were freely debated and even voted upon. Social and economic measures, unconnected with the war, like the Old Age and Widows' Pensions Bill, were debated in the House of Commons with all the fervour of peace time. On the 24th August, 1939, the Parliament granted emergency powers to the National Government. The powers thus granted to the Government were wide indeed, but the Government did not raise taxation, borrow money (except to a very limited extent) or spend the produce of taxation without parliamentary sanction. It could not make changes in the social services without new legislation. The emergency powers did not absolve ministers from the duty of answering questions and criticism.

The effectiveness of Parliament in controlling the Government has been demonstrated more than once during the last war. The Chamberlain Government conducted the war rather faint-heartedly, and the collapse of Finland and the withdrawal of the British from Southern Norway drove the Labour Party frankly to oppose the Government. Such a situation cannot be tolerated during a totalitarian war. The "Munich triumvirate"—Chamberlain, Sir John Simon and Sir Samuel Hoare, therefore, had to resign in May, 1940, and a comprehensive Coalition Government was formed under Mr. Churchill. The Churchill Government, too, had to be reconstituted when major disasters like the fall of Singapore took place.

Parliament has really three functions in war time. First, it should secure the Government which not only commands the majority in the House but also enjoys the confidence of the people. General elections cannot be held in war time, but cabinets and ministers can be changed by the pressure of public opinion. This function has been discharged by Parliament effectively. Secondly, Parliament has to see that the Government is efficient. It has freely asked questions and criticised the government upon the conduct of the war in all its branches and kept watch over both the liberty and security

of the nation. Thirdly, Parliament has to give the most complete backing to the Government which proves both efficient and popular. The House of Commons has often criticised the Government, especially the Air Ministry and the Supply Ministry, yet it has given splendid support to Mr. Churchill's Government.

The House of Commons represents the people, but in war time all that is discussed in the Commons, cannot be made known to the public. The holding of secret sessions of Parliament is a war time innovation. Members are not allowed to let their constituency know what has been said nor who has spoken in the secret session.

## XI. Supremacy and limitations of Parliamentary Authority

The dominant characteristic of the British Constitution is the supremacy of Parliament. Supremacy is a legal fiction, and as such Jennings holds that legal fiction can assume anything. But he is also careful to point out that the supremacy of Parliament comes from law itself.

Long ago Dicey explained the meaning of Supremacy of Parliament. Parliament has legal power to enact, amend or repeal any statute. The courts cannot question the validity of any Act of Parliament. No Parliament can bind its successor. It can also give enormous powers to the executive and can declare long-established conventions to be illegal.

That Parliament can make any law and no Parliament can be bound by any previous enactment nor can it bind its successor may be illustrated by the statutes on the duration of Parliament. Illustrations of supremacy

The Triennial Act, 1694 fixed the duration of Parliament at three years. But the Parliament extended its own life for four years more by the Septennial Act of 1716. The Parliament Act of 1911 reduced the duration of life of a Parliament from seven to five years. Then again the Parliament of 1935 extended its lawful life of five years to nearly ten years. The Parliament has also made legislations on matters relating to

succession to the throne and also to the authorising of a king (Edward VIII) to abdicate. By the Act of Settlement Parliament settled that after Queen Anne, the descendants of Sophia, Electress of Hanover would sit on the throne. Recently, the Parliament has also enacted that the order of succession to the throne after Elizabeth II would be Prince Charles and Duke of Edinburgh. Parliament can also make retrospective legislations, e.g., the Indemnity Act, 1920, War charges validity Act, 1925. It legalised the action of the Bank of England when the latter refused to convert the paper currency into gold. That Parliament can confer new powers on the government may be illustrated from the fact that it allowed the government to acquire or dispose of any private property in 1940. It can create new social service schemes and nationalise huge industries. It has got the sole authority to legalise additions to or defections from the British Empire. It allowed India to declare herself a Republic and yet to remain within the Commonwealth. The theory that Parliament cannot bind its successors means that every Parliament is competent to repeal the laws made by previous parliaments. Section 46 of Housing Act, 1925 invalidated section 7 (i) of the Acquisition of Land Act, 1919. Legislative supremacy of Parliament also means that if bodies other than Parliament legislate, they do so only with its authority. Delegated legislation has been regarded by many writers as lessening of or delegation of authority by Parliament. But it should be remembered that Parliament has supreme power to declare invalid the misuse or extension of powers by administrative authorities or tribunals.

Yet Parliament is neither supreme, nor supreme in all matters of legislation. Dicey and Laski have pointed out the limitations upon parliamentary authority. Parliament is usually careful enough to hold prior consultations before framing a bill on the relation between employers and employees, nationalization of health services, and socialization of important undertakings. Laski rightly observed "No Parliament would dare to disfranchise the Roman Catholics or to prohibit the existence of trade unions". Besides these major interests, Parliament is never forgetful of the electorate, the political sovereign. A member of Parliament always remembers that he should nurse his local constituency and that he has been elected on the goodwill of his constituency. British constituencies do give

directions to their representatives in Parliament to spear and vote on a bill in a particular way.

There are other limitations upon Parliament. Firstly, Parliament cannot change a foreign law. Secondly, though according to section 4 of the Statute of Westminster the British Parliament probably has got legislative powers over Dominions yet the preamble to the Statute of Westminster recognises the fact that Parliament of the United Kingdom would not legislate for any self-governing Dominion without its request and consent. Thirdly, parliament does not make any legislation which is contrary to international law. Socio-economic analysis of the House of commons elected in 1959 :

In the election of 1959 the conservatives polled 49.4% of votes and captured 365 seats, the Labour Party, polled 43.7% of votes and won 258 seats, the Liberal Party, polled 5.9 of votes but got 6 seats only. The occupation of members belonging to the three Parties is respectively as follows :

Barrister 72—27—4 ; Solicitor 14—10—1 ; Doctor 5—7 ; Architect 6—1 ; Civil Engineer 5—1 ; Chartered Secretary 9—3 ; Civil Servant 14—8 ; Armed Services 37—3 ; Teachers 5—36 ; Small business 3—12—1 ; Company Directors 68—1 ; Company Executive 20—5 ; Commerce and Insurance 19—3 ; Clerical 3—5 ; Misc. 84—44 ; Workers 1—90. The educational qualification of members shows that the conservative party has got 104 Oxford, 79 Cambridge and 35 other University graduates as against 34, 12 and 55 respectively of Labour Party. There are 39 members of the Labour Party and 2 of the conservative Party who have got only Elementary education. 76 women contested the election but only 13 of the Labour Party and 12 of the Conservative Party came out successful.

## CHAPTER XI

### PARLIAMENT AT WORK AND ITS PROBLEMS

#### I. Parliamentary Machinery

The Septennial Act of 1715 fixed the maximum duration of Parliament at seven years, and the Parliament Act of 1911 fixed it at five years. The House of Commons cannot alone change the maximum period of its life, as the Parliament Act, which enables the House of Commons to overrule the House of Lords in public bills, specifically excepts laws on this subject. If the House of Commons wants to extend the period of its life, the consent of the House of Lords has to be secured. But both the Houses agreed to prolong the life of the House of Commons which was elected in 1911 to 1918. Similarly the House elected in 1935 was due to expire in 1940, but as no party wanted to have a General Election during the war, its life was prolonged by a series of Acts. Though the maximum duration is fixed at five years, yet the Prime Minister can ask the King to dissolve Parliament earlier. As a matter of fact, the party in power does not usually like to have an election at the very end of five years ; but appeals to the country at a moment which is considered convenient for it. Had the General Election been held every five years, there would have been five elections between 1918 and 1939, but actually there were seven general Elections—in 1918, 1922, 1923, 1924, 1929, 1931 and 1935.

As the Army Act conferring disciplinary powers over the armed forces has to be renewed every year, and appropriations have to be voted for the army, navy and civil service annually, there must be at least one session of Parliament every year. As a matter of fact, Parliament sits from the first week in November until near Christmas, and from the end of January or the beginning of February to the end of July or beginning of August every year. There may be an autumn session of Parliament too. The House of Commons meets on the first four working days of the week at 2-30 p.m. and continues to transact business till 10-30 p.m., but if certain specific kinds



of business are under consideration the sitting may go on till the endurance of members comes to an end. On Friday the House sits at 11 a. m. and adjourns at 4-30 p.m. Fridays are reserved for private business, petitions, notices and motions. On Saturdays the House does not usually sit, nor does it ever sit on Sundays. The first hour in every day's sitting is devoted to the asking and answering of questions.

The following table indicates the variations in the amount of time allotted to business of Government, Opposition and Private members in each session :—

Years	Average length of session	Days spent on		
		Government	Opposition	Private members
1906—1913	145 days	63 days	44½ days	20 days
1914—1918	145 „	61½ „	46½ „	20 „
1919—1931	133 „	52½ „	46½ „	19 „
1932—1938	158 „	70½ „	46½ „	22 „

It will be obvious from this chart that greater portion of the time of the House of Commons is taken up by Government. In 1945-1946 and 1950-1951 out of a total of 212 and 153 days, as many as 101½ and 62¼ days respectively were spent on Government legislations. The Opposition was allowed roughly 30% of the time. But the Private members were allotted roughly 12% of the time between 1906 and 1938. Between 1945 and 1948 no time was given for Private members. So the select Committee recommended to the then Labour Government that—(a) the first twenty Fridays after the debate on the Address should be Private Member's days, motions and bills to be taken on alternate Fridays (b) the first six Bill Fridays should be for Second Reading, the last four for Report Stages and Third Readings.

There are 630 members of the House of Commons but there are seats for only 364 members on the floor. But this does not mean any inconvenience, because the House is never attended by all the members. Mr. Ramsay Muir draws a pen picture of the House of Commons in an ordinary evening, when visitors will find, "forty or fifty men and one or two women sprawling here and there on the benches, listening to—no, not as a rule

listening to, but enduring—a speech from one of their members, while waiting for an opportunity to make speeches of their own. There will be other members in the House, some in the lobbies writing letters, others in the library hunting out references for a speech or preparing an article, others in the smoke-rooms chatting or playing chess, others in the dining-rooms or on the terrace entertaining visitors, none of them paying any attention to the debate, but all waiting to record their votes without having heard the arguments. There will be others in clubs within call, or dining with friends, or at the theatre ; they will come in towards the end of the evening, ready to take part in divisions, having been told by their Whips that the discussion will be carried on until such an hour, when a division will take place ; sometimes the discussion has to be artificially prolonged, in order to fulfil these promises.”

The time at the disposal of Parliament is short and it has to transact an enormous volume of business.

#### Closure

It must therefore conduct the debates in such a way as to effect the best possible utilization of time. When the Speaker considers that enough has been said on the various aspects of a bill, any member can move that “the question be now put”. It was first introduced on 2nd February, 1881 when Speaker Brand stopped the indefinite talks of Irish obstructionists by asking the members of the Commons to put questions. It was subsequently decided that the closure could be sought for and allowed by the Speaker when at least 100 members vote for it. A motion for closure can be tabled even in the midst of a discussion.

A more drastic method of limiting debates is the process nicknamed guillotine, by which a time-limit is fixed for the discussion on each stage and each group of sections of a bill. When the time thus fixed expires, the motion is put to vote, whether all the clauses have been discussed or not. Its origin was also the necessity of counteracting Irish obstructions to the Coercion Bill of 1881.

The Speaker or the President of the House of Commons is elected by the House at the opening of each Parliament and serves as long as that Parliament lasts. In practice, the Prime Minister selects in consultation with the Opposition a person, who has not been a conspicuous partisan. Once elected, he is

#### The Speaker

invariably re-elected again and again so long as he is willing to serve. There has arisen a convention that the Speaker's seat must not be contested at a General Election, though this convention was broken in 1935, 1945 and 1950. The Speaker conducts the business of the House without any party bias and dissociates himself from all party clubs and associations. He draws a salary of £5,000 a year and gets a residence free of light and gas cost. The Speaker has primarily three functions : (1) The Speaker maintains order in the House. His ruling on points of order is final. He insists that he, and not other member be addressed. When he rises up, the member who is addressing the House must sit down. (2) The Speaker derives his name from being the spokesman of the House in its dealings with the Crown. He officially communicates the decisions of the House to the Crown. He issues writs to fill vacancies in the House. He signs warrants by the order of the House for the commitment of offenders against its privileges. He is the judge of any alleged breaches of privilege that occur inside the House during debate. Over and above these, he has a special duty to examine, from the point of view of infringements of privilege, amendments made by the Lords to bills sent up to them by the Commons. (3) According to the Act of 1911, the Speaker is the sole authority to determine whether a particular measure is or is not to be considered a Money Bill.

The House of Commons makes use of committees to save time and to gain the advantage of cooler deliberations in small bodies. Practically all public bills used to be discussed in the committee of the Whole House i.e. the House of Commons itself till 1882. But due to the tactics of Irish parliamentarians to protract debates on bills, the members of the House of Commons began to refer certain bills to two standing committees from 1882 onwards. Gradually with the increasing pressure of legislation, the Standing committees were raised in 1907 to four, in 1919 to six and in 1947 to "as many as shall be necessary." Today there are three kinds of Parliamentary Committee, viz., (a) Standing committees (b) Official Parliamentary Committees and (c) a number of informal committees.

After the second reading, a Public Bill is discussed either in the whole House sitting in Committee or in one of the Standing Committees. Usually bills of constitutional significance

are discussed on the floor of the Commons, as for example, supplies and services Bill, the Representation of the People Bill and the Ireland Bills in 1945-1950. Other bills are discussed in one of the Standing Committees, whose members are elected by the Committee of Selection which is composed of eleven members, drawn from all the main parties and who are nominated at the beginning of each session. The number of Standing Committees, according to Standing Order of 1945, is five. The number of members in each Standing Committee is between 20 and 60. But later on the select Committee recommended that the number of Standing Committees should be increased "as are necessary expeditiously to dispose of the Bills coming up from the House". Their number of members now vary between twenty and thirty. The cause of reduction of number of members have been clearly explained by Mr. Morrison. He observes that "with Standing Committees of sixty or seventy members, as the general practice had been, the membership was so large that it was more difficult to develop the committee atmosphere, with the shorter and more business-like speeches, which was to be desired" (Government and Parliament, p. 211).

There are also a number of official Parliamentary Committees. The most important of such committees is the Committee of Privileges. It is composed of ten members, who look into the complaints of breach of privilege by members of Parliament. The report of this Committee is placed before and voted in the House. There are also Select Committees on Public Accounts, Estimates, Statutory Instruments, Nationalised industries, Civil List etc. Standing order No. 90 describes the functions of the Committee of Public Accounts thus : "there shall be a select committee, to be designated the Committee of public Accounts, for the examination of the accounts showing the appropriation of the sums granted by Parliament to meet the public expenditure, and of such other accounts laid before Parliament as the committee may think fit, to consist of not more than fifteen members, who shall be nominated at the

commencement of every session and of whom five shall be a quorum." This Committee was first set up in 1861 by Mr. Gladstone and to-day it is a powerful body examining accounts of Public Departments. Its popularity has further increased due to the chairman being a member of the Opposition party. The recommendations are placed before the Treasury and Parliament. The Estimates Committee, originally set up in 1912 and reformed in 1929, examines the proposed expenditures without making any change in the Budget policies. It has usually thirty-six members. The committee on Civil List, presided over by the Chancellor of Exchequer, examines the money which is to be voted for the expenses of the Sovereign. Like other reports of select committees, its report on the recommendation of the royal finance, is also submitted before the House of Commons. The history of the Select Committee on Statutory Instruments begins from 1944. It is concerned with delegated or subordinate legislation made by ministers on the authority of previous statutes. At a still later period, in March 1957 was appointed the Committee on Nationalised Industries.

These different Select Committees perform much valuable work. Due to absence of lesser frictions and conflicts, the members work in a more cooperative way and in a better atmosphere. Decisions are arrived at more quickly. Some scholars and public men have advocated increase in number of parliamentary committees. Mr. Jowett proposed that all legislative and administrative matters relating to different ministries should be first discussed before committees and then placed before the Parliament. His views were supported also by Prof. Ramsay Muir as early as 1931. Prof. H. R. G. Greaves suggests that there should not be an increase in the number of members of each Committee to 60 or 70. Each committee should have of some 25 members but there should be a larger number of committees. Moreover, "each committee should have the function of generally considering the state of the land relating to the matter with which it is concerned, and where it saw the need for the introduction of a Bill it should be at liberty to propose it to the House."

## II. The Procedure of Enacting Public Bills

The bills which are considered by Parliament may be classified into three categories ; (a) Public or ordinary bills, (b) Money Bill and (c) Private bills. The Different kinds of bills procedure followed in each case has some distinctive feature of its own. A Public Bill is "one which affects the general interest and ostensibly concerns the whole people or at any rate, a large portion of them." A public bill may be introduced either by the Government or by a private member. If it is a private member's bill, it is drafted by the member himself or by somebody entrusted by him to do so. Government bills are drafted with great care by expert draughtsmen, under the guidance and direction of ministers. The procedure of enacting private member's bill and Government bill is the same but the chance of getting a private member's bill passed is very small. The time allotted for the discussion of private member's bills is extremely limited and unless the member is able to enlist the sympathy and support of the Government he can hardly hope to see his bill enacted.

A Public Bill may be introduced either by asking leave to introduce it or simply by reading the title of the bill. In the latter case the member is required to give notice of his intention to bring in a bill. When the notice is printed in the agenda of the House on a particular day and the Speaker calls upon the member to present it, the latter brings his bill or simply a "dummy", *i.e.*, a blank folded sheet of paper with only the bill's title written on the outside, to the table of the House and the Clerk reads the title. This is considered to have been the first reading of the bill. Sometimes a Minister introduces an important measure with a brief explanation for about ten minutes and the Opposition is allowed to make an equally short speech criticising it. The more formal method of getting a bill before the House of Commons is to ask leave to introduce it, thereby getting an opportunity to make a long speech. Debates follow and the House decides by vote whether to grant the permission or not. Government measures usually get the permission, whereupon the bill is immediately introduced and read first time. A date is also fixed for the second reading.



On the appointed day the introducer of the bill explains the general principles of the bill in a lengthy speech and moves that it be "now read a second time." Details are not considered at this stage, discussions being confined to the general principle underlying the bill. Towards the conclusion of the debate, the leader of the Opposition usually sums up the case against the bill, and the mover, usually a Minister, makes a concluding speech in reply to the attacks. The Government, therefore, brings in all its followers at the time of voting and usually gets the Second Reading passed. The bill then goes automatically to a committee. If it is sent to a select committee it must go to a regular committee as well.

A money bill, a bill confirming a provisional order, or a highly controversial bill is referred to the Committee of the Whole. Other bills go to one of the five Standing Committees according to the direction of the Speaker. The Opposition usually propose a number of amendments, and the bill is discussed clause by clause in details. If the bill is not rejected at the Committee stage, it is reported back to the House.

If the bill does emerge from the Committee of the Whole without any amendment, which is an exceptional case, there is no Report stage. But if it comes with amendment from the Committee of the Whole or with or without amendment from one of the Standing Committees, it is considered by the House afresh and in some detail. Amendments can also be proposed at this stage, but such amendments must be within the ground covered by the Committee.

The final stage in the House is the "third reading", in which nothing but verbal changes can be made. But if any change in principle is sought to be made at this stage, and if the House agrees to do so, the bill must go back to Committee again. Otherwise, the Speaker puts the motion, "that the bill be now read the third time" and if it is passed, the bill is considered to have passed the third reading.

The bill having been passed through all the stages, goes to the House of Lords, where similar stages are also provided.

We have already described how the House of Lords, in case of disagreement with the Commons, can effectively suspend the bill from being passed for one year. The bill becomes an Act after receiving the Royal assent, which is given at a ceremonial held in the House of Lords, where the King is represented by Lords, Commissioners.

### III. The Procedure of Enacting Private Bills

A private bill is defined in the *Manual of Procedure* of the House of Commons as one whose object is "to alter the law relating to some particular locality, or to confer rights on or relieve from liability some particular person or body of persons."

A private bill is generally put forward by a tramway company or a municipality to construct or extend tramway or to provide an area with gas, electricity, water or sewerage. Such a bill seeks to interfere with the property rights of individuals or corporations and as such require the sanction of Parliament, which alone can abrogate public or private rights.

A private bill commences by petition, which must be accompanied by a description of the proposed undertaking and an estimate of its cost. Such information must be filed with the Private Bill Office and with the particular Government Department which is concerned with the enterprise contemplated in the bill. Preliminary proceedings

Notice must also be given to all persons likely to be affected by it. If the official "Examiner of petitions for private bills" of the House to which the bill is to be presented certify that all these preliminaries have been complied with, it is sent to the House and read a first time and ordered to be read a second time. If the bill is not opposed, it will pass through the same stages as a public bill. But if the bill is opposed by some interested person or body, it is referred to one of the numerous private bill committees after the second reading. Each of such committees of the House of Commons consists of four persons and of the House of Lords of five persons. The committee makes a judicial enquiry of the merits of the undertaking, calls witnesses and hears advocates. If the committee is satisfied that the object of the bill is desirable, it will examine the measure in detail and report to the House. If passed by the

committee, the bill is read a third time. It then goes through the same stages in the other House and finally becomes law with the assent of the King. The political parties do not concern themselves with the promotion or opposition of private bills.

#### IV. Process of enacting Money Bills

A Money Bill is one which has for its object the grant of public money or the imposition of taxes. The procedure of enacting such a bill is somewhat different from that of public bills. The general principles which govern the financial action of Parliament are three in number. The first rule states that the executive cannot raise money by taxation, borrowing or otherwise or spend money without the express sanction of Parliament. The second rule is that the House of Lords has got only the power to assent to Money Bills, but its refusal is practically of no consequence. The third rule is that the House of Commons cannot vote money for any purpose whatsoever, nor can impose a tax except at the demand and upon the responsibility of Ministers of the Crown. This presents private members from proposing any taxation or expenditure, though they can move a motion for refusing or reducing them.

Parliament has absolute control over all expenditure, but it does not consider every year the outlays for support of the Royal establishment, the salaries and pensions of Judges, interest on the national debt, the public expenses of conducting Parliamentary elections, and other Consolidated Fund services or charges, which are continued from year to year, till they are changed by a new Act of Parliament. It should be noted here that these charges are not by any means "non-votable items" as many such charges were in India. What Parliament considers every year are expenses for the "supply services"—mainly the army, navy, air and civil services. The Ministers have to submit to Parliament "Estimates" which are written statements showing how much money would be needed for specific purposes, and requesting the grant of the required amount for those purposes. These estimates are prepared after long consultations between the Treasury and the spending departments between October 1 and January 15 preceding the fiscal year (1st April to 31st March) for which these are prepared. Every estimate must be endorsed by the Treasury.

The estimates are classified into some 150 groups, each group corresponding to a distinct service, and each called technically a "vote". Each "vote" is considered by the House in what is known as Committees of Supply which is a Committee of the Whole House. The Chairman of the Committee presides over it instead of the Speaker. Nearly every estimate as presented in the Committee is made by the Opposition, the opportunity for discussion of some big principle. The usual mode of expressing dissatisfaction with a Department is to propose a token cut of £ 100 in the salary of the minister or in the estimate of that Department. Resolutions of supply having been carried in the Committee, the Chairman solemnly reports this approval to the House of Commons. Discussions on supply are limited to twenty days, and may be extended to three more days by the Ministry. But these days are scattered throughout the session, Thursdays of successive weeks being specially reserved for this business. "Votes on Account" or provisional permission is given by Parliament to the Treasury to spend the amount which would be required by each Department between April and August, before which the work of the Committee of supply cannot be finished. The authority to draw the money from the Consolidated Fund is given by resolutions passed by another Committee of the Whole House, known as the Committee of Ways and Means. The resolutions of these committees with regard to provisional permission to spend are embodied in the Consolidated Fund Bill, which is passed before the 1st April. Early in the session the House resolves itself into the Committee of Ways and Means, which alone can authorise issues from the Consolidated Fund and determines whence the money voted in the Committee of Supply shall be drawn, whether by taxes or by loans. The resolutions of the Ways and Means Committee authorising the issue of money from the Consolidated Fund are embodied in the form of bills which being passed through the usual stages of public bills become known as the "Appropriation Act".

Many of the taxes such as death duties, stamp duties, most of the customs duties and some excise duties, are levied according to permanent statutes, which however can be repealed or altered any year. The Chancellor of the Exchequer with the

help of the Treasury officers makes careful estimates of what amount he would bet from the various items of taxation. If he finds that the estimates of expenditure exceed the probable income he proposes fresh taxation. On the 31st of March he makes before the House of Commons the Budget speech in which he reviews the finances of the previous year, tells what expenditures are to be provided for and what revenue to be expected and finally discloses his plan about taxation, which has been kept a strict secret before this hour. His proposals relating to revenue are considered by the Committee of Ways and Means, which may adopt them or amend them. But the proposals for raising taxes as disclosed in the Budget speech of the Chancellor of the Exchequer are usually accepted by the House of Commons. The provisions are put into effect immediately after the speech. The resolutions of the Committee are reported to the House, and then embodied in the form of Finance Bill which includes all fiscal regulations for the year regarding both revenue and national debt. The Finance Bill being passed by the two Houses by the usual procedure of public bills and receiving the assent of the King, becomes known as the Finance Act.

### V. Merits and Defects of Parliamentary Procedure in Financial Matters

The British system of voting supplies and raising taxation is expeditious because the Cabinet, commanding a majority in the House of Commons, can secure all that it needs without much difficulty. Private members cannot propose any new items of expenditure nor can suggest any addition to the expenditure proposed by the Cabinet. This prevents extravagance to a certain extent. The House of Commons is constitutionally competent to reduce the estimate but seldom has it reduced an estimate submitted to it on financial grounds. The Treasury exercises unified control over expenditure and the raising of revenue. Salaries of Judges and other payments of Consolidated Fund charges are drawn from the Bank of England on requisition by the Treasury and on the authorization from the Comptroller and Auditor-General. The Paymaster-General draws money from the Bank of England for the Supply Services

Unified control  
and expeditious  
method

by virtue of an order by the Comptroller and Auditor-General countersigned by two Treasury Lords. The Comptroller and Auditor-General present annually to Parliament an account together with a report in which is shown that the sums voted by the House of Commons to the several enumerated purposes have been spent strictly upon them and not otherwise. This report is examined in detail by the Public Accounts Committee, appointed by the House of Commons and the result of the scrutiny is reported to the House. The reports of the Comptroller and Auditor-General and of the Committee of Public Accounts are of the greatest possible value in checking any laxity in administration.

The procedure for enacting money bills is alleged to have four main defects. First, it is complained that the procedure is antiquated and useless for modern times. Much time is said to be uselessly spent over mere formalities, like the debate on "grievances", when the House of Commons has acquired complete control over every item of national business. Secondly, the Committee of the Whole is too large a body to discuss the intricate problems raised by the estimates of supply. The House has very little time (only 20 days) to examine whether the amount demanded is really needed. Thirdly, the estimates and accounts are presented to Parliament in such technical form that ordinary members find it extremely difficult to understand it. They cannot take an intelligent interest in the discussions over these. Fourthly, the proposals of the Government are not discussed on their own merits, but are debated on party lines. The Opposition tries to discredit the government on some general question of political policy, and the supporters of the government rush in to uphold the proposed expenditure and taxation, irrespective of the merits of the proposals themselves. As a rule the Government proposals are carried. Munro, therefore, states that "if the British budget were put directly into effect as soon as it has been approved by the Cabinet, and without going to the House at all, its final figures would not be appreciably different". But this is not always true. The Baldwin Government in 1928 proposed a tax on light oils which would have increased the cost of kerosene in poor men's cottages. The Government had the requisite majority to pass the proposal, but in the face of vehement opposition it had to drop the idea.



Proposals have been made from time to time to reform the procedure of voting supplies. But no tangible result has as yet been achieved. The Select Committee on National Expenditure made the following criticism of the present system : "The time at its (the House of Commons) disposal is closely restricted. It cannot examine witnesses. It has no information before it but the bulky volumes of the Estimates themselves, the answers of a minister to questions addressed to him in debate, and such facts as some private members may happen to be in position to impart. A body so large, so limited in its times, so ill-equipped for enquiry, would be a very imperfect instrument for the control of expenditure even if the discussions in Committee of Supply were devoted entirely to that end. But those discussions afford the chief, sometimes the only opportunity in the course of the year for the debate of grievances and of many questions of policy. In the competition for time, those matters of greater interest and often of greater importance, usually take precedence, and questions of finance are crowded out. And even if all these obstacles are overcome, and some rare occasion arises on which the House of Commons discovers and debates a case where a reduction on an Estimate appears desirable, and would be disposed to insist upon its view, the present practice, which regards almost every vote of the House as a vote, not only on the merits of the question, but for or against the Government of the day, renders independence of action impossible".

## VI. Problems before Parliament

(a) Congestion of business : The British Parliament has to discharge the onerous functions of not only controlling the government but also that of promoting the welfare of the people of the country as a whole. With the increasing demands of a social service state, volume of business has also increased enormously. Greaves observes "the whole procedure of Parliament is adapted to the needs of the 19th century laissez-faire society and the coming of the social service state, with all the increase in public services and industrial regulation, has but little affected legislative procedure. The resulting congestion of public business is appalling." A rough impression of the pressure on Parliament due to heavy legislation alone can be gathered from the table given below :

Session	Acts of Parliament	Number of pages
1932—1933	53	1047
	59	664
1934—1935	47	1076
1935—1936	54	1900
1937—1938	73	950
1945—1946	83	1390
1946—1947	55	1941
1947—1948	67	2035
1948—1949	103	2327

Parliament has passed these laws by limiting debates, using guillotines and closures, and authorising delegated legislation.

(b) Grievances of members of Parliament : The growth of the influence of party system and the need to vote at the wishes of the party, the variety of business, pressure from the local constituency, the larger amount of time taken by the front-bench speakers are some of the main causes of docility of private members of the Parliament. Mr. Nigel Nicolson, once a member of Parliament records his own experience thus : "A

whole day can agreeably disappear in answering half-a-dozen constituency letters in the morning while attending a Standing Committee with only a quarter-ear open to the debate, listening to questions and Ministerial statements from 2-30 to 4 p.m. looking in on two party committees in the evening, entertaining a couple of visiting Americans to drink on the terrace and then gossiping in the smoking Room till it is time for bed . . . . There is no place where a man, can occupy himself more intensively or usefully and no place where he can hold down his job by doing so little. The very magnitude and variety of the business that comes before Parliament are deterrents to hard work" (People and Parliament, pp. 64-65). Such an indolent attitude undoubtedly is to be traced to the party discipline. Winston Churchill himself admitted that "The earnest party man becomes a silent drudge, tramping at intervals through lobbies to record his vote, and wondering why he comes to Westminster at all" (Life of Lord Randolph Churchill Vol I. p. 69).

In this connection it is desirable that a reference should be made to the observations of some politicians on the quality of the members of Parliament. Earl Attlee feels that the type of M.P.s which were found before the Second World War are not available these days. The duty of serving the nation is not attracting first class thinkers and men of superior abilities to the Parliament since the second world war. In an article contributed to the Political Quarterly (1959), Attlee complains that to day the loaves and fishes are attenuated and the man of ability who seeks to make money will turn elsewhere". There are some members in the House of Commons whose sole aim is to further the interests of private enterprises in which they serve. The consequences of all these factors are low level of debates and lack of creative thinking.

Today many people think that parliamentary bureaucracy has been replaced by tyranny of the Cabinet and the bureaucracy. Due to the extension of social services, nationalized industries, the two world wars, the growth of party discipline and the dependence of members on the salary they receive as members of Parliament, the House of Commons has become something

like a registering body. Moreover, the recent tendency of increasing volume of legislations has resulted in the fall in number of Private Bills and truncation of debates on legislation and administration.

(d) Delegated Legislation : With the ever-increasing scope of Governmental activity in socio-economic sphere, Parliament thinks it wiser to indicate only major principles in a bill and leaving discretionary power to the administration to fill in the details. This method of delegating to the Government departments the power of making rules by Orders-in-Council, Orders, Warrants, Regulations and Rules is known as delegated legislation. An official minute explained some of the distinct advantages of the system of delegated legislation as early as 1893. These are (1) it shortens and clarifies Bills before Parliament, (2) encourages flexibility, because administrative details can be drawn when the need comes "with greater care and minuteness, and with better adaptation to local and other special circumstances than they possibly can be during the passage of a Bill through Parliament". (3) provides a speedy and convenient means to give effect to the policy determined by Parliament and lastly, (4) it is invaluable in a period of emergency, when "the legislature can dispense with its own deliberative procedure and arm the executive with power to take immediate action." These arguments have been repeated by Molson in 1944 and again by Mr. Morrison. But the latter also emphasises the need of keeping constant watch by Parliament. Some thinkers argue that the recent tendencies of the departments to evade the authority of courts and Parliament, the increasing use of administrative tribunals and great public corporations, have diminished the authority of Parliament. These factors led Lord Hewart, Prof. W. A. Robson, Dr. Port and Prof. Keeton to think of dangerous consequences. Prof. Keeton warns us that if recent tendencies towards delegated legislation are not checked "in the long run, it is impossible to preserve freedom of the mind.... In the end, there will have been produced something approximating to the planned stagnation of the Chinese Empire. That would be an odd fate for a people who built the Common Law and who were responsible for Magna Carta, *habeas corpus*, and dominion status. Yet the threat is real, and the hour late".

## VII. Nature and Functions of the House of Commons

The House of Commons was a homogeneous body up to the end of the nineteenth century. Members belonged practically to the same social class and had almost the same type of education. The alternating cabinets might have belonged to different political parties, but they never differed about the foundations of society. "It is evident," wrote Lord Balfour, "that our whole political machinery supposes a people so fundamentally at one, that they can afford safely to bicker ; and so sure of their own moderation, they are not dangerously disturbed—by the never-ending din of political conflict". But with the emergence and consolidation of strength of the Labour Party, the fundamental unity of members of the House of Commons has practically disappeared.

There is sharp difference now in the outlook, in training and education and even in physical features between the members of the Conservative Party and those of the Labour Party. Majority of members of the Conservative Party are rich, highly educated, and well-nourished in appearance, whereas some members of the Labour Party have had no education beyond the elementary schools, and their features bear the mark of struggles for existence. There are, however, many intellectual giants and a few captains in industry in the Labour Party too.

A little less than 25 per cent of the members of the House of Commons have had only elementary education. In the general election of 1950, 84 ex-students of the exclusive and expensive Eton Public School were returned to the House. Of these, only 5 belonged to the Labour Party and 79 to the Conservative Party. Majority of members have had the benefit of University education.

The analysis of occupation of members of the House of Commons made by Mr. Ross reveals the following facts (C indicates belonging to Conservative Party and L to the Labour Party) :—

Occupations	1951	1950	1945
Lawyers	85 (51 C)	108 (60 C)	83
Teachers and Lecturers	47 (43 L)	43 (39 L)	56 (49 L)
Journalists and authors	38 (29 L)	46 (27 L)	41 (31 L)
Engineers	14 (12 L)	10 ( 6 L)	×
Doctors	10 ( 7 L)		14 (10 L)
Clergymen	3 ( 3 L)	×	×
Manufactures, Bankers and Traders	50 (39 C)	47 (39 C)	46+24
Miners, metal-workers, rail-road-men, wood-workers and Trade Union officials	89 (89 L)	67 (67 L)	45 27 T. U. 18
Former civil servants	5 ( 3 L)	18 (13 C)	17 (11 C)
Retired Military Officers	21 (18 C)	51 (44 C)	51 (46 C)
Not gainfully employed—have private means	40	×	×
Company Directors	84 (80 C)	×	×
Landowners	15 (14 C)	10 ( 7 C)	
Farmers	19 (19 C)	×	16 (11 C)
Farm Workers	Nil	Nil	Nil
Clerks and Secretaries	×	32 (27 L)	36 (30 L)
Political Organizers	×	9 ( 7 C)	×

It may be mentioned in this connection that though the number of women in the U. K. is greater than that of men, yet they are represented by only 25 women.

Women in  
Parliament

The number of women members of the House of commons in 1962 is the same as it had been in 1945.

- In classical constitutional theory the House of Commons is represented as the supreme body controlling and overthrowing the ministry, initiating and making law for the country and regulating the finance of the State. In actual fact, we find that it is only in the case of a major crisis in the nation, leading to a split within the majority party, that the ministry may be compelled to resign. Again, if there is no solid majority belonging to any single political party as was the case

Functions in  
theory and in  
practice



in 1923-24 and 1929-31, the ministry becomes unstable. In normal circumstances a ministry which has been formed by a majority party continues to hold power till the next election. The last case of a ministry coming to office with a large majority resigning on account of a hostile vote in the House of Commons occurred as late as 1885. With the broadening of the franchise, emergence of large constituencies and adherence to strict party discipline, it has become exceptionally rare for the members of a majority party, voting against the ministry. Ordinary followers of the majority party sometimes even go so far as to criticise the Government in the House of Commons, but at the time of voting they normally side with the Government. They think that the retention of their party in power is much more important than their conviction for or against a particular measure adopted by the Government. A vote of no confidence in the Government or rejection of an important bill put forward by the ministry is followed by a dissolution of the House of Commons and a general election. No member of the ruling party likes to face an election in which the fate of each and every member will be uncertain. Moreover, the party will not certainly nominate persons who have voted against the Government. All these considerations have made the members of the majority party absolutely docile to the Government. Once a party comes to power with a clear majority at its back, it is likely to retain power till the end of the life of Parliament. But this does not mean that the leaders of the party are indifferent to the views of their followers or to the reaction of their measures in the country. Through the Whips of the party they keep themselves in close touch with the opinion and sentiments of their followers. They adopt a particular course of action with the primary idea of winning the next election. It is in this indirect way that the House of Commons now controls the Cabinet.

The business of the Opposition is to oppose the measures put forward by the Ministry. They criticize the Government severely at every possible step. But they know that by their speeches, however cogent these might be, they would not be able to convert even a single member of the majority to their views. But that is not their objective. They try to convince the public that the Government is vicious or incompetent or both, so that the people might cast their votes at the

A forum for  
criticism of the  
Government

next election for their party in preference to the party which is in power for the time being. Thus the most important business of the House of Commons has now become to provide a forum for criticism of the Government.

The House of Commons also controls the Civil Service  Control of the Civil Service	and defends the civil liberties of the people through numerous questions and debates on motions for adjournment.
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### VIII. Proposals for Reform

The plans suggested by publicists and expert committees for remedying the evils arising out of the congestion of business in

Regional devolution	Parliament may be classified under three heads. The first plan is to make arrangement for the territorial devolution of the powers of Parliament. The central Parliament should be relieved of the burden of making laws for England, Wales, Scotland and Northern Ireland, in each of which regions a subordinate legislature is to be set up. The Speaker's Conference decided in 1930 that the regional parliaments should be entrusted with subjects like regulation of trades and professions, police, public health, public charities, agriculture, law and minor judicial administration, education, housing, insurance, highways and municipal government together with the control of some sources of public revenue. But Laski and Henderson calculated in 1925 that such a devolution would save the time of Parliament by about eight percent; but in a session like that of 1936-37 when the questions of unemployment and foreign affairs were prominent the saving in time would be about five per cent only. For the sake of this small saving in time all complications of federal jurisdiction, financial conflicts, differential treatment of similar problems in different regions, will have to be faced. "Moreover, federation is breaking down," observes Laski, "by reason of the fact that any division of power which leaves important subjects in the hands of the subordinate legislatures also leaves the federal government thereby unable to handle its problems efficiently. It is ironical to suggest that a system which attempts to make Great Britain a quasi-federal society would be helpful at a time when the validity of federation itself is open to such grave doubts."
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The second plan is to take away social and economic affairs from the jurisdiction of Parliament and entrust them to an Economic Council. Sidney and Beatrice Webb are the sponsors of this scheme. But now-a-days no question can be segregated from its economic implications. Moreover, the failure of the German Economic Council set up under the Weimer Constitution has given rise to grave doubts as to the effectiveness of such institutions.

The third plan advocated by the Speaker Conference and supported by Laski, is to set up new committees. An advisory committee of members of Parliament should be attached to each department of state. The function of such a committee would be to discuss confidentially the bill proposed to be put forward for legislation, to watch the process of administration and to make suggestions for policy on examination. If some members are trained in such work, it would be easier to find persons acquainted with the work of the department before they are appointed as ministers. The adoption of this suggestion would be a valuable safeguard against bureaucracy and would also give members material for understanding the issues raised by particular bills. Such committees can also be usefully consulted by the departments before issuing orders and regulations under authority delegated by Parliament.

The work of enacting private bills may also be conveniently entrusted to committees of the two Houses which should be frankly judicial in character. Parliament as a body should not trouble itself with private bills.

### IX. Delegated Legislation

The process of transformation of the Police State, charged simply with the maintenance of law and order, to the Welfare State, having responsibility for enriching the personality of every citizen, has given rise to delegated legislation. Parliament has got neither the time nor the expert knowledge necessary for making technical details relating to laws of a highly industrialized state. It has, therefore, become the practice of the British Parliament to indicate only the major

principles and to pass laws in skeleton form, leaving discretionary power to the administration to fill up the details. This method of delegating legislative powers to the executive or professional bodies is known as delegated legislation.

Delegated legislation is not a new feature. The Report of the Committee on Ministers' Powers tells us that it existed as far back as the sixteenth century when, it was stated in the preamble to the statute of Proclamations on behalf of Henry VIII in 1539 "considering that sudden causes and occasions fortune many times which do require speedy remedies and that, by abiding for a Parliament, in the meantime might happen great prejudice to ensue to the Realm .... It is therefore thought in manner more than necessary that the king's Highness of this Realm for the time being, with the advice of His Honourable Council, should make and set forth proclamation for the good and politic order and governance of this His Realm". Queen Anne imposed quarantine arrangements by Orders in Council and a proclamation in 1710 when plague broke out in the Baltic Sea area. The outbreak of the first World War necessitated the delegation of authority to the executive by the Parliament. From the days of the passing of the Defence of the Realm Act on 8th August, 1914 began the increase in the number of subordinate legislation. Whereas between 1894 to 1913 subordinate legislation was about 210 per year on an average, it increased to 1200 in 1918. The number declined between 1922 and 1931. The period of the Second World War again increased the number to 1900 in 1942 and 1000 in 1944. The growth of nationalized industries, public corporations and increasing social services could become possible by strengthening the executive to pass orders, bye-laws etc. Consequently subordinate legislations numbered 1500 in 1949 and 1211 in 1950.

Delegated legislation may take the form of Orders in Council or rules made by the Department concerned. The Orders-in Council are at first prepared by the Departments concerned and then adopted by the King-in-Council. The rules are prepared and promulgated directly by the Department concerned upon the authority of the appropriate Minister, acting under the statutory power. Sometimes sub-delegation of authority

takes place, as when a statute permits an Order-in-Council, which in turn authorises a Ministerial order which again may authorize an official regulation. Subordinate law-making authority is often vested in local authorities like the Railway Executive or in the statutory bodies, either independently or with the approval of a Government department. Thus the Cotton Industry Board has derived the power of making laws from the Cotton Industry Act of 1939, the catering Wages Commission from the Catering Wages Act, 1943 and the various Marketing Boards from the Agricultural Marketing Acts. The powers conceded to these bodies are very wide, ranging from power to inflict a heavy fine to that of driving out a person trading in industry out of business altogether.

The proliferation of Defence of the Realm Act, 1914 led to a series of outcry against delegated legislation. A number of writers drew attention to the increasing legislative powers of ministers, executive bodies and administrative tribunals. Sir Cecil Carr complained of the importance of legislative powers exercised by ministers and executive authorities in 1921 in his book *Delegated Legislation*. Prof. W. A. Robson pointed out the judicial functions administered by administrative tribunals in 1928. Lord Hewart accused the civil servants of usurping the judicial authority in his *New Despotism* in 1929. These writers were followed by F. J. Port, (*Administrative Law*), Dr. C. K. Allen (*Bureaucracy Triumphant*) and Prof. G. W. Keeton (*The Passing of Parliament*).

Delegated legis- lation as limiting supremacy of Parliament	These writers have shown that the increase in delegated legislation has diminished the authority of British Parliament in a number of ways. It has also been viewed as dangerous to British liberty. These writers argue that Departments have sought more extensive powers by "Henry VIII clause". By virtue of this clause, Departments have been given power to modify not only the Act from which the power is derived but also any other Act in order to operate the Act. Sometimes the Executive does not want or very reluctantly agrees to surrender the powers given to them by Parliament. For purposes of security, Parliament declared in the National Registration Act, 1939 that identity cards would be required of all citizens. Parliament also stated that this Act would be enforced till a suitable date is fixed by the Order-in-
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Council. But even seven years after the end of the Second World War, the executives demanded identity cards and policemen required such cards whenever any motorist did any offence. Thus an act which was enacted for reasons of security of England began to be used for administrative purposes till 1952, when the Act was repealed. Again the Emergency Powers (Defence) Acts of 1939 and 1940 had conferred power to ministers to make Defence Regulations in a manner as to help the war efforts. But the ministers issued such regulations which were wider in scope and indirectly connected with the successful prosecution war. By special regulations, the Minister of Fuel and Power controlled coal mines, the Board of Trade fixed location of industries and the Minister of Labour and National Service sought to control employment, avoidance of strikes and lock-outs and also to provide canteens for civilian workers, seamen and fishermen. Sometimes delegated legislation means retrospective legislation. We have already seen that Parliament is alone authorised to make retrospective legislation. But clause 28 of the Finance Act of 1950 gave the Commissioners of Income Tax power to disallow any transaction effected before or after the Finance Act, 1951 "if they think that one of the main purposes of this transaction was the avoidance or reduction of liability to profits tax". Thus we find that the Act provided for taxation on certain capital payments which were not subject to tax at the time of promulgation of the Act of 1950. The freedom of the executive is more apparent in the management and control over nationalised undertaking. Parliament is satisfied merely with the annual reports of the State monopolies. Parliament has not enough time either to scrutinise the voluminous report or to question the efficiency of the management. Viscount Alexander defended the responsibility of ministers to the Parliament on the general running of a State undertaking and not its day-to-day administration. He said before the House of Lords, in July 1951 "Ministers alone were responsible to Parliament for the way in which Board were conducted. The chairman and members of any Board were responsible to Minister by whom they were removable. Anything which weakened the position of Ministers *ipso-facto* weakened Parliament, and no Board member should be expected to assume a role of accountability to Parliament which was proper to the



responsible minister". The House of Commons ordered on 21st June, 1944 that a Select Committee should be appointed to consider every Statutory Rule or Order placed before the House. It was also laid down that the committee should draw the attention of the House to any regulation on any of the following grounds—(a) that it imposes a charge on the public revenues or contains provisions requiring payment to be made to the Exchequer or any Government Department or to any local or public authority in consideration of any license or consent, or of any services to be rendered, or prescribes the amount of any such charge or payments ; (b) that it is made in pursuance of an enactment containing specific provisions excluding it from challenge in the courts either at all times or after the expiration of a specified period ; (c) that it appears to make some unusual or unexpected use of the powers. Conferred by the statute under which it is made ; (d) that it purports to have retrospective effect where the parent statute confers no express authority so to provide ; (e) that there appears to have been unjustifiable delay in the publication or in the laying of it before Parliament ; (f) that there appears to have been unjustifiable delay in sending a notification to Mr. Speaker under the proviso to subsection (1) of section 4 of the Statutory Instruments Act, 1946, where an Instrument has come into operation before it has been laid before Parliament ; (g) that for any special reasons, its form or purpose calls for elucidation.

Another safeguard for controlling the exercise of legislative powers delegated to ministers is adequate publicity. The National Insurance Act, 1946 requires the appointment of an Advisory Committee by the Minister of National Insurance. The Committee gives public notice to all the preliminary drafts of all regulations received from the above-mentioned Minister and then fixes a period during which objections to the draft are invited from any person or body affected by the regulation.

Some scholars have rightly pointed out that adequate safeguards against abuse of power to legislate have been taken in recent years. We should not be too apprehensive of delegated legislation, because of parliamentary control. Sometimes it is provided that Parliament shall

decide the sphere of executive authorities. Sometimes it is provided that bills must lie before the House for 40 days and are then considered approved if no nullifying prayer has been passed against them. Sometimes rules and orders of Departments must be laid before the House, "as soon as may be", that is, notice of 40 days must be given. During this period, a member may ask a question, but Parliamentary procedure does not allow this to be followed by discussion and amendment. If this method is followed, the rules come into operation at once.

Mr. Herbert Morrison also discussed in his book *Government and Parliament* the various opportunities for members of Parliament to enquire into the working of publicly owned industries e.g. questions on salaries paid to officials, capital investments for developments or improvements of Boards, annual audits etc. The other occasions on which parliamentary discussions on socialized industries can be held are : (a) debate on an amendment to the sovereign's speech at the opening of each Parliamentary session, (b) Private Members' Bills, (c) debate on a Bill to amend the original nationalization Act (d) debate on a Motion to approve or annul a Statutory Instrument Act made by a minister, (e) and every day at the half-an hour time for discussion on the Motion for Adjournment. Lord Strabolgi suggested before the House of Lords three methods by which nationalised industries may be controlled by Parliament : (1) a permanent standing committee of members of both the Houses, with power to examine Ministers and members of nationalised Boards ; (2) setting up of a select committee every three, four or five years to examine each nationalised industry ; (3) the reference of the affairs of these industries to the Monopolies Commission.

## CHAPTER XII

### THE CABINET GOVERNMENT

#### I. Development of the Cabinet System in the 20th century

The immense growth in the authority of the Cabinet in the first half of the twentieth century is the most important aspect of recent constitutional history. Laski attributed it to the two wars which centralized power, and in which the Prime Minister became a 'dictator by consent'. The increasing authority of the party organizations and the complexity of the governmental problems also contributed to the increase of the power of the Cabinet and corresponding decline of the power of House of Commons. Bagehot defined the Cabinet as "a Committee of the legislative body selected to be the executive body." But it is

really a committee of the party which is supported by a majority in the House of Commons, and selected by one member of one party in Parliament from among the other members of the same party. The Cabinet, though appointed by Parliament can dissolve Parliament. The Cabinet is the pivot of governmental authority, which directs the administrative machinery of the state and largely controls the House of Commons. But it is not referred to in any Parliamentary statute except indirectly. The members of the Cabinet have the right to advise the Crown only because they are members of the Privy Council. The Privy Council is a huge heterogenous body which has never been called for giving political advice since 1714. Lowell has characterised the British Government machinery as "one of wheels within wheels ; the outside ring consisting of the party that has a majority in the House of Commons ; the next ring-being the ministry, which contains the men who are most active within the party ; and the smallest of all being the Cabinet, containing, the real leaders or chiefs. By this means is secured the unity of party action which depends upon placing directing power in the hands of a body small enough to agree, and influential enough to control." But in recent years a select body within the Cabinet known as the Inner Cabinet has developed.

The Inner Cabinet, which was formally recognised during the first World War and again constituted during the second World War. But there is always, in every government, some four or five ministers, who are specially in the confidence of the Prime Minister, and who discuss the general policy in an informal way before bringing it to the larger body of cabinet ministers. "In most Government," writes Lloyd George, "there are four or five outstanding figures who, by exceptional talent, experience and personality, constitute the inner council which gives direction to the policy of a ministry. An administration that is not fortunate enough to possess such a group may pull through without mishap in a tranquil season, but in an emergency it is hopelessly lost."

The Cabinet consists of some twenty principal ministers of the state. The Cabinet of Sir Robert Peel in 1841 contained fourteen ministers, of whom five had no serious departmental duties. In 1936 the Cabinet consisted of twenty-one ministers, of whom five, namely the Prime Minister, the Lord Chancellor, the Lord President of the Council, the Lord Privy Seal, and the Minister for the Co-ordination of Defence, had no serious departmental duties. Besides these five, the seven Secretaries of State, (namely, the heads of the Foreign Office, the Home Office, the War Office, the Commonwealth Relations, the Colonial Office, the Ministry for Air and the Scottish Office), and the Chancellor of the Exchequer, the First Lord of the Admiralty, the President of the Boards of Trade, the Ministers of Labour, Agriculture and Fisheries and Transport, and the Post-Master General are usually taken in the Cabinet. The present law requires that at least three members, besides the Lord Chancellor, should be taken from the House of Lords. Every one in the Cabinet is a member of the ministry, but every minister is not in the Cabinet. Some Cabinet ministers like the Lord Privy Seal, Minister without Portfolio and Lord President of the Council are free from departmental duties because they are expected to devote their time to the integration of policy and committee work. Some ministers are designated as "of Cabinet rank." Such persons attend the Cabinet only when affairs of their departments are considered.

The Cabinet has been aptly described by Marriott as "the pivot round which the whole political machinery revolves." Its

Functions of the Cabinet chief functions are to formulate the policy of the nation on every great question that arises, to superintend and control the vast administrative machinery of the state, to persuade the House of Commons to support the measures proposed by it, and to induce the Monarch to give his final sanction to the steps taken by it. The Cabinet determines finally the policy which is to be submitted to Parliament. It exercises supreme control at the national executive in accordance with the policy prescribed by Parliament. It also exercises the function of continuous co-ordination and delimitation of the authorities of the several Departments of State. The Cabinet finally decides the disputes between two or more Departments.

The heavy pressure of business on the Cabinet has been somewhat relieved by the organisation of committees. The

Committees committees of the Cabinet are of three kinds :—Standing, *Ad hoc*, and Informal.

First, there are Standing Committees like the Committee of Defence, the Legislative Committee, the Lord President's Committee to co-ordinate Home affairs, the Policy Committee to co-ordinate economic policy and the Production Committee. The Committee of Defence consists of the representatives of the Treasury, the Foreign Office, the Home Office, the Commonwealth Relations Office, the Colonial Office, the War Office, the Air Ministry and the Admiralty as well as of three chiefs of staff and the permanent secretary to the Treasury. The function of the committee is to think ahead, to plan in the light of all the information available from the eight departments the step which might have to be taken if war broke out and with these plans in view, to advise what forces and equipment should be available in the Navy, the Army and the Air Force. The Prime Minister presides over the committee which has a number of sub-committees under it. Such an organisation relieves the Cabinet of the necessity of considering all but the vital principles of policy. Dr. Jennings is of opinion that the Committee of Imperial Defence is not a cabinet committee. The *Ad hoc* committees are appointed to deal with particular issues. Informal committees of ministers are set up from time to time.

Besides the Inner Cabinet, recently an organisation has been evolved for co-ordinating the work and policies of several groups of closely related departments. Co-ordination of work of related Departments Thus some of the important ministers have been made heads of all the departments dealing with co-related subjects like defence, external relation or economic affairs.

The Cabinet Secretariat The proceedings of the Cabinet were not formally recorded before 1917, when Mr. Lloyd George set up the Cabinet Secretariat. The Secretary of the Cabinet now attends the cabinet meetings. With a staff of 137 persons he arranges the agenda of cabinet meetings, collects data, records the proceedings and performs the general secretariat work not only for the Cabinet and its various committees but also for the Cabinet and its various conferences with which the Cabinet is concerned. The secretariat has also to communicate the decisions of the Cabinet to the different officials and departments that have need to know them. It has also to summarize the memoranda which the members of the Cabinet have written on any item of the agenda and to circulate them to the whole cabinet. In normal times the cabinet meets for about two hours fifty to sixty times in a year.

The cabinet system underwent significant changes during the first Great War. Up to the end of the year 1916, the whole Cabinet used to guide the war policy, but War Cabinets Mr. Lloyd George found that the work could not be transacted with sufficient speed under such a large body. In 1917, he suppressed the ordinary cabinet and replaced it by a War Cabinet, consisting of five to seven members. All the members of the War Cabinet, excepting the Chancellor of the Exchequer, were free from departmental duties, which were left to the ordinary ministers. The War Cabinet used to call before it experts from the Army and Navy departments for advice. This was a startling departure from the constitutional usage of confining the business of the Cabinet to the members only. Another innovation was the invitation to the Prime Ministers of Dominions to attend a series of special meetings of the War Cabinet. When these Dominion Prime Ministers attended the War Cabinet, it was called the "Imperial War Cabinet." General Smuts, who came to attend these meetings



became virtually a member of the British War Cabinet. In the words of Lloyd George, Field Marshall Smuts "became and remained until the end of the war an active member of the British Cabinet for all the purposes of war direction." Field Marshall Smuts was also invited during the second World War to go to England whenever necessary. Early in December 1943, when Mr. Churchill was absent from England for attending international conferences, at Cairo and Teheran, Smuts was asked by the Prime Minister to take over part of his responsibilities especially in connection with the war.

On the outbreak of the war in September, 1939, Mr. Chamberlain formed War Cabinet, consisting at first of nine, and then reduced to eight members, five of whom were the Chancellor of the Exchequer, the Foreign Secretary, and the heads of the three defence Departments. This arrangement suffered from three defects. First, the ministers in charge of important departments like the Admiralty, War Office and the Air Ministry could not spare time to attend daily cabinet meetings. Secondly, the size of the War Cabinet was too big for reaching decisions quickly. Thirdly, in a totalitarian war the ministers in charge of labour, shipping, food supply etc., could not be given less importance to the ministers directly concerned with the active conducting of the war. When Mr. Churchill became the Prime Minister he reduced the size of the War Cabinet and himself took the office of Defence, in order to secure effective co-ordination between the three Defence Departments. He also appointed Major Attlee as the Deputy Prime Minister, a new post altogether and delegated to the Lord Privy Seal the Leadership of the House.

In the eighteenth Century, the Cabinet, while belonging to the Whig or the Tory party, was recruited usually from the rank of the aristocracy. From 1832 to 1914 the members of the Cabinet belonged to the propertied and professional portion of the middle class. But now some of them belong to the small bourgeois and working classes. In the period between 1830 and 1900 all the eleven Prime Ministers, excepting Peel, Disraeli and Gladstone were Peers. But in the period between 1902 and 1945 none of the nine Prime Ministers was a Peer. Mr. Ramsay MacDonald was the first Prime

Change in the  
personnel of the  
Cabinet

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Minister to be recruited from the working classes. Laski has shown that the hold of the aristocracy on Cabinet positions has gradually diminished during the last hundred years. Of the Cabinet Ministers between 1801 and 1831 some 73 per cent were the sons of possessors of hereditary titles ; between 1832 and 1867 their percentage declined to 64, between 1868 and 1905 to 58 and between 1917 and 1924 to 25 per cent. Another interesting fact about the British Cabinet is that now-a-days seldom can a person attain the position of Prime Minister before his sixtieth year and that of Cabinet Minister before his fortieth year.

## II. Principles of Cabinet Government

The Cabinet system is based on five outstanding principles. First, the sovereign must be excluded from the Cabinet council.

Exclusion of the Sovereign      This peculiar custom owned its origin to the habitual absence of George I and George II from the Cabinet. If the King be present in the Cabinet meeting, some degree of responsibility attaches to him. But the convention has been firmly established that the King must not identify himself with any political party. If he takes an active part in formulating policy, it cannot be said that the "King can do no wrong."

Secondly, there must be close correspondence between the political executive and the legislature. The Cabinet must be selected from the party or parties which has or have the support of the majority in the House of Commons. This principle was recognised for the first time during the Ministry of Walpole. Walpole remained in office only so long as he could command majority in the lower Chamber. Even George III recognised partially the validity of this principle and tried to secure a majority by means of bribery and corruption. Owing to the recognition of this principle, the Cabinet, which is the Executive, can work in harmony with the House of Commons, which is the most influential part of the Legislature. Moreover, members of the Cabinet must have seats either in the House of Commons or in the House of Lords in order to answer questions regarding their departments and to control Parliament.

Thirdly, there must be political homogeneity in the Cabinet. All the members of the Cabinet should preferably belong to the

same party and hold the same political views. This is necessary for maintaining unity in council. There might be free discussions in the Cabinet, but a compromise is to be arrived at in the end. Political homogeneity

England was governed continuously from 1931 to 1945 by Coalition Government, though Disraeli said that England does not love coalitions. A Coalition Government, if continued for a long time, either gives rise to a re-alignment of parties or breaks the parties altogether. \*

Fourthly, the Cabinet stands or falls together as a unit. Prof. Hearn is of opinion that the principle of collective responsibility and corporate unity was recognised for the first time in 1782. "As a general rule", wrote Lord Morley, "every important piece of departmental policy is taken to commit the entire Cabinet, and its members stand or fall together. The Chancellor of the Exchequer may be driven from office by a bad despatch from the Foreign Office and an excellent Home Secretary may suffer from the blunders of a stupid Minister of War." But in practice the principle of collective responsibility is not carried so far. The Cabinet may decide for itself whether it would accept or disown the responsibility for a decision taken by a minister, with or without consulting the Cabinet. Dr. Jennings points out that the Hoare-Laval Agreement of 1935 had apparently the sanction of the Cabinet behind it, but when the Baldwin Cabinet found bitterly opposed by the public, it decided to repudiate it. "Sir Samuel Hoare was therefore allowed to make himself a scape goat and to resign his office of Foreign Secretary." If, however, the Cabinet decides to take the responsibility for the action of a Minister, any discussion on it is treated as a question of confidence on the Cabinet as a whole. The principle of collective responsibility is adhered to so closely that a minister does not make a speech even outside Parliament contrary to cabinet policy.

Fifthly, the Prime Minister keeps a strict control over the members of the Cabinet. When the Prime Minister finds that a particular member is persisting in holding views contrary to his own he asks him to resign. He not only creates the Cabinet, but also dissolves it by tendering his own resignation. He is consulted by every minister before an important matter is put forward.

Subordination to the Prime Minister

### III. Evolution of the Post of Prime Minister

The Treaty of Berlin, 1878 is the first official document in which the word Prime Minister occurred as the appellation of Lord Beaconsfield. The *office* of Prime Minister was not known to the law until 1905, when by Royal Warrant of December 2, the holder of the office was given precedence next after the Archbishop of York and thus his office was formally recognised. Some of the functions of the Prime Minister have been exercised by one person or another since the Norman conquest. Thus Ralph Flambard under William II, William Longchamp under Richard I, William of Wykeham under Edward III, Wolsey and Thomas Cromwell under Henry VIII, William Cecil under Elizabeth, Clarendon under Charles II, had some of the attributes of a modern Prime Minister. But all of them lacked two of the essential characteristics of a modern Prime Minister. First, they were servants of the monarch and not of Parliament. A Prime Minister is legally a servant of the monarch, but it is Parliament, which exercises real control over him. Secondly, none of the above-mentioned persons was at the head of a council of ministers.

Walpole has been called the first Prime Minister of England, though he himself strongly denied the appellation. Officially he was a member of the Privy Council and the first lord of the treasury. So long as the monarch presided over the meetings of Ministers no body could claim to be superior over other ministers. Both William III and Anne attended the meetings of Ministers. During their reigns there was no understanding that the ministers were mutually responsible for one another's acts. William III was not only his own Foreign Secretary but also the real as well as formal head of the government. He used to consult four or five of his leading ministers. The ignorance and indifference of the first two Hanoverian Kings gave opportunity to Walpole to create the post of Prime Minister.

Walpole exercised nearly all the high prerogatives and duties of the modern Premier. Townshend worked as his colleague for nine years, but when they quarrelled, Walpole forced him to resign. He selected only those men as ministers who would

obey him. He maintained discipline in the ministry with an ironhand. Cox relates in his *Life of Walpole*, that Walpole went so far as to use physical force in a case of Cabinet discipline. He insisted on his colleagues agreeing with him or resigning. Walpole maintained his majority in the House of Commons through a judicious exercise of the immense patronage which belonged to the King. He enjoyed the privilege of appointing all judges, bishops, deans, officers in the army and navy, and clerks in the civil service. Members of the House of Commons and of the House of Lords were very keen on securing these lucrative positions for their relatives and friends. Walpole, therefore, could easily secure their support.

There is one fundamental difference between Walpole and a modern Prime Minister. Walpole was apprehensive of the power of the masses and he dreaded democracy. He did not owe his power to the free choice of the people. Very few people were enfranchised in that age. He ruled through royal prerogative derived in large part from the preference of the King. But it must be said to his credit that he tendered his resignation when he lost his majority in the House of Commons.

The evolution of the post of Prime Minister was obstructed by the determination of George III to become his own Prime Minister. He made Lord North virtually his head clerk between 1770 and 1782. He himself governed England during this period. He secured the support of the two houses of Parliament by means of bribery and patronage, by the creation of boroughs and peerages and by other acts of royal prerogative. George III intensely disliked the Whigs and in his effort to keep them out of power, entrusted Pitt, the younger with the task of forming a Tory ministry in 1784. Pitt was cleverer than George III. He remained Prime Minister for seventeen years and he carried out his own policy. If at times he yielded to the prejudice of the King, he did so with a view to rule. The King, indeed, was still a power to reckon with, and Pitt could not remain in office without the permission of the King. But such

He drove out  
from Cabinet  
all who disobeyed him

How did he  
maintain power ?

Difference with  
modern Prime  
Minister

Revival of the  
power of King  
under  
George III

Contribution of  
Pitt the younger  
1784-1801  
1804-1806

was the masterful personality of Pitt that he created the impression that it was he who was ruling rather than the King. But when Pitt produced a Bill for removing all the political disabilities of Catholics, George III resisted him with all his powers. Pitt had to resign in 1801, though he still enjoyed the confidence of Parliament. In 1804 Pitt returned to power but out of consideration for the King did not take any step to ameliorate the condition of the Catholics. His political opponent Addington formed a group in Parliament with sixty or seventy members, who openly posed as the "King's friends." They were so formidable that Pitt was obliged to conciliate

Development  
till 1806                      them by admitting their leaders to places in the Ministry, which lasted till 1806. This shows that up to 1806 the position of the Prime Minister was rather weak and insecure. While Walpole emphatically repudiated the title of Prime Minister, Pitt said in 1803 that "there should be, an avowed and real minister, possessing the chief weight in the council and the principal place in the confidence of the King."

Sir Ivor Jennings calls Sir Robert Peel the first of the modern Prime Ministers, in the strictest sense of the term. Lord Rosebery describes Peel as the 'model of all Prime Ministers'. As the range of activities of the state was comparatively small, he could keep a strict supervision over every department. "He was conversant with all departmental questions", observes Lord Rosebery, "and formed and enforced opinions on them. And, though he had an able chancellor of the Exchequer, in whom he had full confidence, he himself introduced the great Budget of 1842 and that of 1845. The War office, the Admiralty, the foreign office, the administration of India and of Ireland felt his personal influence as much as the Treasury or the Board of Trade."

Neither Disraeli nor Gladstone could exercise such detailed supervision over the different departments. But Disraeli kept a very watchful eye on the proceedings of all his colleagues. Lord Salisbury, on the other hand, left his colleagues very much, to themselves, unless they consulted him. This is why Asquith said, 'the office of Prime Minister is what its holder chooses to make it'. Mr. Asquith had no taste for interference



in administration, and exercised very little control. Baldwin seldom initiated a proposal in the Cabinet. Churchill observes that Baldwin "was largely detached from foreign and military affairs. He knew little of Europe and disliked what he knew." Mr. Churchill proved the ideal Prime Minister during the war. But he did not prove equally successful in peace time.

#### IV. Position and functions of the Prime Minister

The Prime Minister has been called the pivot of the whole system of government. It is he who manages the monarch, the Cabinet, the House of Commons and the Powers of the Prime Minister party at one and the same time. He forms the Cabinet, he can alter it or destroy it. He can request the monarch to prorogue or dissolve the House of Commons. "An English Prime Minister," writes an acute political observer, "with his majority secure in Parliament, can do what the German Emperor, and the American President, and all the Chairmen of the committees in the United States Congress can not do, for he can alter the laws, he can impose taxation or repeal it, and he can direct all the forces of the State." A general election now-a-days really decides as to which of the leaders of the contending parties should be the Prime Minister. But he is far from a Dictator. He is not the official head of the State as Hitler was. The primitive instinct for worship of tribal chieftain expresses itself in loyalty to the King and not to the Prime Minister. The Prime Minister has not only to tolerate the Opposition but also answer the charges levelled against him. Moreover, the Prime Minister has to respect the rules and conventions of the Constitution which a Dictator can disregard.

It is a characteristic feature of the English Constitution that such a high post as that of the Prime Minister did not find any official and formal recognition before the year 1878. Even in that year Lord Beaconsfield was mentioned in the Treaty of Berlin as "First Lord of Her Majesty's Treasury, Prime Minister of England" as a concession to the ignorance of foreigners. A Royal proclamation of December 1905 gave place and precedence to the Prime Minister in ceremonial functions next after the Lord Chancellor, who is officially subordinate to him. The first parliamentary statute to refer to the post of Prime Minister

His legal  
status

Berlin as "First Lord of Her Majesty's Treasury, Prime Minister of England" as a concession to the ignorance of foreigners. A

was passed in June 1937, which provided a salary of £10,000 a year to "the person who is Prime Minister and First Lord of the Treasury." The other ministers receive salary varying between £2000 and £500 a year.

The Prime minister submits his own choice of ministers to the Sovereign. He allocates different departments to the ministers. He also presides over the Cabinet functions of meetings. His opinion carries great weight Prime minister with his colleagues, because of his vast experience and great power. He is no longer the chief among equals, but really superior to his colleagues. His prestige has increased with the increase in the size of the electorate, which now really votes for the selection of the Prime minister. Since the passing of the Reform Act, the voters in General Election make up their mind first as to who should be the Prime Minister and then cast votes in favour of the party likely to form a government. The Tamworth Manifesto issued by Sir Robert Peel was an appeal to the British Public. Similar election addresses to the nation were given by Palmerston in 1865, Disraeli in 1868, Gladstone in 1880 and Mr. Macdonald in 1931. The Prime Minister exercises a general supervision over all departments. In the nineteenth century some Prime Ministers like Peel were autocrats. In the twentieth century both Attlee and Churchill had overall control over different departments. Their attitudes and actions are in strange contrast to the opinions of Lord Oxford, Asquith or Lord Rosebery. The latter held that "A Prime minister who is the senior partner in every department as well president of the whole, who aspires and vibrates through every part, is almost, if not quite an impossibility." Sometimes the Prime Minister intervenes without being asked by a departmental minister. Such a type of intervention was made by Lord Salisbury in 1885 and soon Lord Randolph Churchill resigned from the post of Secretary of State for India. He takes a particular interest in foreign office and looks into all the important despatches before they are sent out. Sometimes the Prime Minister —foreign has confidence in the actions of the Foreign affairs Secretary and does not impose his personal opinions on the latter. Mr. Gladstone discussed foreign affairs in a friendly way with Lords Clarendon, Granville and Rosebery. Wide discretionary powers were given by Prime Ministers like Macdonald and Baldwin to their Foreign Secretaries, Sir John

Simon and Sir Austen Chamberlain respectively. Mr. Baldwin gave such a freehand to his Foreign Secretary in 1935 that Jennings complains "the course of the Laval—Hoare discussions at the end of 1935 appear to warrant the assumption that the Foreign Office has more independence than it possessed before 1914". But such cordial relations are not usual. All Prime Ministers do not share the views of Lord Salisbury, who said "The Prime Minister may lay down the broad principles of foreign policy, but those principles can only be carried out by the judicious execution of a number of details, and if the Prime Minister attempts to interfere in these latter, the only result is confusion". Both Lords Grey and John Russell supervised the action of Lord Palmerston as Foreign Secretary. Russell even went to the length of dictating Palmerston as to what the latter was to say and to present the drafts approved by him. As Lord Beaconsfield had differences with his Foreign Secretary Lord Derby over the Russo-Turkish War, the former reduced the latter to the position of "almost an under-secretary" in 1878. Such differences of opinion between the two are also noticeable in the relations of Mr. Lloyd George and Lord Curzon, Mr. MacDonald and Mr. Henderson, and between Mr. Neville Chamberlain and Mr. Eden. Lord Curzon had opposite views on two clauses of the Treaty of Sevres which was negotiated by the then Prime Minister, Mr. Lloyd George. Mr. Eden, on the other hand, did not like the policy of abandonment of sanctions against Italy. So when Chamberlain decided to negotiate with Italy, Eden resigned on Feb. 20, 1938. The problem of these differences over foreign policy, of course, does not exist when the Prime Minister himself becomes the Defence Minister, e.g. Mr. Ramsay MacDonald in 1924 and the then Mr. W. Churchill in 1940-1945 and 1951. The Prime Minister also acts as an informal mediator in the quarrels between different departments.

The Prime Minister can drop some of his cabinet ministers and replace them by others. In July, 1962 Mr. Harold Macmillan replaced important cabinet ministers like Mr. Selwyn Lloyd Chancellor or the Exchequer and six others by Mr. Reginald Maudling and others. He has made Mr. Butler Deputy Prime Minister. The Prime Minister represents the Cabinet in relation to the Crown. He alone is entitled to report to the queen on the decisions of the Cabinet. When he tenders his resignation the whole Cabinet is dissolved and the queen must entrust the formation of a fresh Cabinet to him or his rival party-leader. The

Prime Minister has also considerable freedom in choosing the ministers, though sometimes the monarch is able, by his personal influence, to prevent the appointment of some persons not liked by him. The Prime Minister makes statements of general nature to Parliament while other ministers speak about their respective departments only. He keeps a careful watch over all the government bills in Parliament, and is expected to speak not only on general questions but also on the most important of these bills. He must not only show skill in debate, cogency of arguments, mastery technicalities in the House of Commons but display judgment, understanding and ability to grasp the essential points at issue. Above all he must have the ability to keep a group of men in harmony and with enthusiasm. Ministers are removed by the Prime Minister after serious considerations. Instances of such removals are not rare, e.g. Gladstone removing Mr. Ayrton in 1873, Attlee asking Mr. Greenwood to retire in 1947. The Prime Minister represents occasionally his country at international conferences e.g. Lord Beaconsfield at Berlin Congress, Mr. Lloyd George at the Paris Peace Conference, Mr. Neville Chamberlain in Germany and Mr. W. Churchill at several conferences of the Allied Powers enduring the Second World War. He also visits countries in order to promote goodwill, e.g. Mr. Harold Macmillan visiting India and U.S.S.R. It is also his duty to receive foreign representatives.

The vast patronage of the Crown is dispensed by the Prime Minister. He makes recommendations for appointments of the archbishops, bishops and some senior dignitaries of the Church of England, Lord Chief Justice and other judges, Lord Lieutenants of Counties, the Clerk of both Houses of the Parliament, Governors of colonies and the trustees of National Museums. Since 1920 a Minister has to secure the approval of the Prime Minister for appointment and dismissal from posts in the first two grades in the Civil Service, and also Finance and Establishment Officers. He also recommends the award of civil honours and distinctions to the Sovereign, who may or may not agree. Peerage is also conferred on the Prime Minister's recommendation.

It is also the duty of the Prime Minister to advise the king or queen to visit a foreign country or to go on tour to a part of the kingdom or any Republic of the Commonwealth.

Mr. Baldwin exercised this power and considerable differences with Edward VIII are reported to have taken place.

During a period of emergency or war, the Prime Minister assumes greater control over administration. It was at his own initiative that Mr. Disraeli purchased the shares of the Suez Canal. During a war "he ceases to be mere chairman or co-ordinator and becomes chief of a vast war machine. He is, in other words, no longer Chairman of the board of directors of a holding company, but managing director of an even larger operating company" (Jennings). Mr. Lloyd George assumed very wide authority during the First World War. He forced Sir W. Robertson, Chief of the Imperial General Staff, to resign. He himself was also the chief British representative at the Peace conference and negotiated the terms of the Treaty of Sevres at his own initiative. Mr. Churchill was responsible not only for the prosecution of war but also presided over the security measures during the Second World War.

The position and the extent of influence of the Prime Minister depend on his personality. Mr. Amery rightly observed "he is, in effect, both captain and man at the helm, enjoying, as undisputed working head of the State, a power far greater than that of the American President—so long as he does not actually forfeit the allegiance of naturally deferential and loyal colleagues in the Cabinet or of his followers in Parliament".

## V. Relation between the Cabinet and Commons

The relation between the Cabinet and the House of Commons has considerably changed in recent years. Throughout the greater part of the nineteenth century, the House of Commons was supreme not only in legislative but also in its executive functions. The Duke of Devonshire said in 1893 that "Parliament make and unmake our Ministries, it revises their actions. Ministers may make peace and war, but they do so at pain of instant dismissal by Parliament from office ; and in affairs of internal administration the power of Parliament is equally direct. It can

dismiss a Ministry if it is too extravagant or too economical ; it can dismiss a Ministry because its government is too stringent or too lax. It does actually and practically in every way govern England, Scotland and Ireland". But in the twentieth century it seems that the Cabinet has gained greater control over the Parliament.

The authority of the Parliament has declined in matters of legislation, administration, financial policy, foreign affairs and dominions or colonies.

Legislation      The power to initiate and shape all important bills in practice is confined to the members of the Cabinet. The standing order provides for 14 Fridays for Private Members' Bills each session and 7 Wednesdays for their motions. But in actual practice 12 full days are allotted for their motions and 10 full days for their bills each session. Now-a-days the bills sponsored by private members are fewer. A private bill becomes an Act only through the assistance of the Cabinet, e.g. Matrimonial Causes Act of 1937. Members of Parliament undoubtedly can criticise the legislative proposals of the Cabinet but their criticisms hardly influence the vote of the House. Moreover, when ministers decide whether a private bill will go to committees or discussed in the Committee of the Whole House, the dominance of the Cabinet becomes very clear.

As regards administration, we have already shown how departmental legislation and administrative tribunals evade the scrutiny of Parliament. The members of the Commons have very little power of scrutinising the working of the nationalised industries.

According to constitutional theory, the House of Commons can compel the resignation of a ministry by refusing supplies. But the control of Parliament over financial bills is rather formal.

Refusing supplies      "The refusal to pass Mutiny Act or grant supplies" says Anson, "has never in fact been applied". All proposals for raising the revenue or spending it must come from Cabinet. This type of self-imposed restriction on private members of Parliament dates from the passing of the Standing Order 63 of 1713. There are other factors which show how the control over purse has gone over to the Cabinet. The number of days allotted to the debate on the estimates is only 26. Consequently, very seldom



the members of the House of Commons have an opportunity to go into details of the bill. Only policies are discussed in the debate. Often many "votes" are passed without any debate. Further, Parliament does not cover the gap between the work of its Committees and the debates on the financial policy. The two Committees are the Public Accounts Committee and the Estimates Committee. The former only sees that the money granted by Parliament has been spent on proper items in the prescribed manner. The Estimates Committee, consisting of 36 members enquire only into the administrative side. Basil Chubb has pointed out its scope and defects. "It is more interested in the departments' memoranda and explanation of organization work and results than in the money figures into which they can be translated" (The Control of Public Expenditure, p. 166). Lastly, the technicalities of a financial bill are increasing in such a manner that the ordinary members do not feel any real and lasting interest in formulating the country's economy.

It is commonly held that the House of Commons has four opportunities for criticising the conduct of the Cabinet. These are (a) an amendment may be put down to the Address of the Sovereign delivered at the beginning of each session ; (b) a Private Member can put down a notice of motion ; (c) he can rise to move the adjournment of the House "for the purpose of discussing a definite matter of urgent public importance". If 40 members rise in their places to support him, he can bring forward his motion. (d) The leader of the Opposition can at any time claim to move a vote of want of confidence. But most of these powers are really not effective. It all depends on the wishes of the Cabinet which decides on dissolution of Parliament. Defeat in the House of Commons on an issue does not necessarily mean dissolution or resignation of the Ministry. Sir Robert Peel did not resign when an amendment was moved to the Address in 1834. Similarly, Lord Rosebery or Mr. Balfour did not forthwith resign after their defeats in 1894 and 1905 respectively. Further, in war-time resignation of a Prime Minister is not necessarily followed by dissolution of Parliament. Mr. Lloyd George and Mr. Churchill reconstructed their ministries in 1916 and May, 1940 without making an appeal to the country. Another device to save a ministry from resignation is appointment of an enquiry

committee. Special commissions were set up to enquire into the failures of the Dardanelles and Messopotamian campaigns. A judicial committee was set up in 1936 to enquire into the rumour of leakage of income-tax proposals in the budget of 1936.

The supremacy of the Cabinet is clear in the field of foreign affairs. In peace and war the decisions of the Cabinet have usually been accepted by the Parliament. The House of Commons have acquiesced in treaties after they had been concluded by the Cabinet, e.g. French treaty of 1899, Anglo-French Entente in 1904, Triple Entente in 1907, Treaty of Peace Act, 1919, Locarno Pact of 1925. Sometimes transfer of territories has first been decided by the Cabinet and the Parliament has been informed of the arrangement later on, as for example, acquisition of Wei-hai-Wei in place of Port Arthur by Britain, restoration of Jubaland to Italy in 1925. The dominance of the Cabinet over Parliament is also well illustrated in policies like negotiation with Italy or annexation of Austria and Czechoslovakia by Germany in 1938. Parliament had to agree to the above-mentioned Anglo-Italian agreement of April 16, 1938 or seizure of Sudetenland area of Czechoslovakia by the Germans as accomplished facts by the Cabinet, which had won the election of 1935 on the programme of supporting the League of Nations and principle of collective security.

The helplessness of Parliament is also well illustrated in its ratification of accomplished facts decided by the Cabinet, as for example, non-compliance with the terms of the Bank Charter Act by the Bank of England in 1847 and 1857, refusal to pay out gold in 1931, purchases of wheat, oil and sugar secretly for defence purposes in April 1938.

The London *Economist* in its issue of September 4th, 1943, suggested that the direct power of Parliament to-day is much less than it was before. In reply to this Mr. F. W. Pethick-Lawrence, who had been a member of the House of Commons for the last twenty years, wrote: "I venture to assert that the present House of Commons, elected in 1935, has exercised more power than any of its immediate predecessors, except perhaps for the two brief periods of minority Labour Governments. This is particularly true since

—in foreign  
affairs

ex post facto  
events

Increase of  
power of  
Parliament  
during the war

the formation of the War Coalition but even before that, the House had secured the resignation of Sir Samuel Hoare over the Abyssinian question, had induced the Government to create supplementary old age pensions ; had insisted on Mr. Chamberlain honouring promptly the pledge to Poland ; . . . and had overthrown the Government and made Mr. Churchill Prime Minister. Since May, 1940, the House of Commons has been supreme, and the Government has interpreted its wishes. This is hidden from the outside public, partly because the newspapers have very little space to report the debates, but still more because M. P. s prefer to exert their pressure otherwise than in the division lobby, or even in criticism in the chamber. I need only mention a few of the admitted achievements of the House of Commons. On several occasions it has induced Mr. Churchill to make important changes in the personnel of his Government. It pressed the necessity for national war danger insurance, and, after the Bill was introduced, substantially changed its provisions. It brought about the abolition of the Household Means Test. It destroyed the Government's fuel rationing proposals. It procured, successive stages, immense modifications in the Purchase Tax. It forced on a reluctant Cabinet equal compensation for women for war injury. It has insisted on substantial ameliorations in conditions, pay and pensions of the services. While some of these have been the work of sections of M. P. s, most of them have been brought about by the House as a whole" (The Economist—18-9-43). The reason for the increased power of the House lay in the fact that the members knew that the Cabinet would not be able to dissolve the House and hold a General Election during the war. The fear of a dissolution deters them in normal time from pressing their views upon the Government.

Dr. A. B. Keith gives the following reasons for the increase of the power of Cabinet : "The extension of the franchise and the redistribution of seats into one member constituencies in 1885 have strengthened "the Causes of in-  
crease of power  
of the Cabinet  
electorate of the party organisation, and  
diminished the independence of the Com-  
mons ; the increase of electioneering costs,  
with the extension of the franchise in 1918, and the payment  
of members, have conspired to render members extremely sen-  
sitive to the threat of dissolution, and have compelled them in  
the main to follow loyally the leaders whose party aims they  
have bound themselves to support. The Commons thus has, on

the one hand, become more sensitive to the control of the electors ; on the other, it has ceased to control Cabinets, and it dare not reject or substantially amend government measures. The adoption of rules of procedure which more and more abstract the rights of Private members to secure discussions or legislation and the absorption of the time of the Commons by the Government have contributed to the subordination of the Commons to the Cabinet." It should be realised that the actual work of Government cannot be carried on by 630 persons in open debate. Parliament cannot, and is not designed, to govern ; it can only criticise and thereby restrain the Cabinet from adopting measures which are not supported by public opinion.

It is often complained that Cabinet has assumed almost dictatorial powers in recent years. But Dr. Jennings rightly points out that "*It cannot be said that this is dictatorship*. At worst it is dictatorship for a term of years certain ; but dictators who at short intervals have to beg the people for votes freely cast are the servants of the public, and not its masters." We have already cited many instances where the Cabinet, despite its majority in the House of Commons, had to give up a line of policy or sacrifice particular ministers in response to public opinion.

## VI. Some problems of Cabinet Government

With the widening of franchise and tightening of party control the position of the supporters of the government who occupy the Back Benches has deteriorated much. The Government does not care to utilise the talents of the supporters amongst private members and prevent them from participation in debates. Some of these back benchers complain that they have got only two duties to perform, namely, to vote at the dictate of the party Whip and to hold their tongues. Under such conditions they do often smart under a sense of frustration. Consequently, there have been a number of back-bench revolts, e.g. in the Labour Government of 1945-1950. Mr. Morrison has himself admitted that the relationship between the back-benchers and Government was not cordial. He has also given us the basic causes of this imperfect relationship in these words : "My own

view was that, although there were elements among the back-benchers who were factious, difficult, and needlessly troublesome, the fault rested as much if not more with the Government. There was a tendency on the part of some Ministers to sidestep the party meeting by not being present when they ought to have been. This naturally irritated the back-benchers and the fact that the Minister or Ministers concerned might then have been asked to attend a later party meeting sometimes annoyed Ministers. One felt that some of the Ministers regarded party meetings and the back-benchers as nuisances, whilst many of the back-benchers felt that some leading Ministers (the late Arthur Henderson being an outstanding exception) were deliberately avoiding party meetings". In order to avoid the ill-feeling and to promote healthier social contact between Ministers and back-benchers several proposals were introduced and experimented in 1924, 1929-1931 and 1940-1945. The Labour Government of 1945 worked out a scheme of a small Liason Committee, which sought to remove the misunderstanding by requesting ministers to explain the scope of bills or the pros and cons of policies.

The widening of the functions of the State and especially the nationalization of industries are creating new departments.

Increasing number of departments	In 1914 there were 16 main departments viz. Lord Chancellor's Department, Treasury, Home office (Secretary of State), Foreign Office, Colonial Office, War Office, India Office, Scottish Office, Irish Office, Admiralty, Board of Trade, Local Government Board, Board of Agriculture and Fisheries, Board of Education, Post office, Office of Works. The two World Wars increased the number of departments further. In 1914-18 were added 13 more, viz. Air Ministry, Ministry of Munitions, Directorate of National Service, Ministries of Labour, Pensions, Reconstruction, Blockade, Propaganda (Chancellor of the Duchy of Lancaster), offices of Food Controller, Shipping controller, and Departments of Mines, Overseas Trade and Scientific and Industrial Research. In 1939-1945 further additions were :— Ministries of Defence, Supply, Production, Home Security, Economic Warfare, Food, National Insurance, Information, Aircraft Production, Civil Aviation, Town and Country Planning and Reconstruction. Of course some of these departments have
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ceased to exist and to function at times, e.g. Ministry of Economic Welfare, Ministries of Pensions, Reconstruction, India Office and Department of Overseas Trade. Since 1946 new or co-ordinated departments are the following :—Ministry of Agriculture, Fisheries and Food (1955), Commonwealth Relations Office (1947 replacing Dominions Office set up in 1925), Ministry of Defence (1946-1947), Housing and Local Government (1951), Central office of Information (1946), Ministry of Pensions and National Insurance (1951), Ministry of Supply (1946), and Ministry of Transport and Civil Aviation (1953, amalgamating these departments created in 1919 and 1945.).

The increase in the number of departments raise the questions whether all the ministers in charge of departments should be included in the Cabinet, and what should be the

appropriate size of a Cabinet. There have been much variation in the composition of Cabinets. Though 20 members were included in the Cabinets of Lords Salisbury in 1901, Mr. Asquith in 1914 and Mr. Attlee in 1945, yet the departments representing therein were not the same in all cases. An illustration may be given :—

Mr. Asquith in 1914 and Mr. Attlee in 1945, yet the departments representing therein were not the same in all cases. An illustration may be given :—

<i>Ministries in Salisbury's Cabinet (1901) but not in Asquith's</i>	<i>Ministries in Attlee's Cabinet (1945) but not in Salisbury's or Asquith's</i>	<i>Secretaries of State for Scotland, Dominions, Air, Ministries of Labour and National services, Fuel and Power</i>
Lord Lieutenant of Ireland	Minister of Labour & National Service	
Lord Chancellor of Ireland	Secretary of State for Air	
	Secretary of State for Dominions	
	Ministries of Fuel, Power and Education	
	(continued in next column)	



Excepting the abnormal years of 1916-1919, 1931 and 1939-1945, the normal size of a Cabinet in the twentieth century has been between 19 and 22.

Years	Number of Members in Cabinet	Years	Number of members of Cabinet rank
1901—02	20	1924	20
1902—05	17 to 19	1924—29	20 to 21
1905—08	19 to 20	1929—31	19 to 21
1908—15	19 to 20	1931	10
1916—19	5 to 7	1931—35	19 to 20
1919—22	18 to 22	1935—37	20 to 22
1922—23	16	1937—39	21 to 23
1923	19 to 20	1939—40	8 to 9
		1940—45	5 to 9
		1945	16
		1945—50	16 to 20

In pre-war days almost all the Ministers were members of the Cabinet. Excepting the Ministers of Pensions, Postmaster General, First Commissioner of Works, Paymaster-General and Law Officers of the Crown, rest of the 23 ministers in charge of departments were included in the Cabinet of Mr. Neville Chamberlain in 1939.

But such large Cabinets are not favoured by politicians. Mr. Morrison thinks that a Cabinet composed of nearly thirty members is too large for effective business. Small Cabinet : Mr. L. S. Amery wanted that a Cabinet should super-Ministers be small, and its number of members be between 5 or 7 Ministers. In his *Thoughts on the Constitution* he desired that a small Cabinet of non-departmental ministers

"would deal with current administrative questions, as did the War Cabinets of the last two wars, by bringing into its discussions the departmental Ministers directly affected. But it should also have regular meetings definitely set aside for the discussion of future policy." He also held that these super-Ministers having no portfolio, would be assisted by two groups of committees: (a) standing and ad hoc committees under non-departmental chairmen to co-ordinate and adjust the current work of departments; and (b) standing "Policy Committees" would study "policy in the main fields of External Affairs, Economic and Social Welfare, each with its own adequate research and planning staff". The advantages of such small

super-Cabinets are thorough and intimate discussion in Cabinet meetings, forbidding too much of departmentalism and a close

co-operation between planning and administration. But many scholars and politicians think that Mr. Amery's proposals are not workable and desirable. Sir Arthur Salter pointed out that in peace times a supper-Minister not supported by a powerful department would scarcely prevail over a powerful department like the Treasury. Morrison found the scheme unworkable because a Cabinet without allocation of portfolios would have no touch with day-to-day administration, and would not be able to establish the link between the Parliament and people. He also objected to the scheme for "the Cabinet is not just a group of backroom boys brooding over future policy." Further it would be a wrong policy to exclude those men who are energetic and who have bright prospects in the future.

A Cabinet consisting of 16 to 18 members has been favoured by Lord Attlee, Sir Winston Churchill and Baron

Herbert Morrison. Mr. Attlee's plans were Co-ordination of that (a) some members of the Cabinet would ministers be directing broad issues of policy and not

burdened with departmental work (b) those Ministers charged with co-ordination "will be in constant and close contact with the Ministers in their respective groups, who will, through them, be able to make their views felt more effectively. Thus in the Labour Government of 1945-1951, the then Mr. Morrison as the Lord President acted as chairman of a number of Cabinet Committees; Mr. Ernest Bevin as Foreign Secretary co-ordinated the overseas affairs and Sir Stafford Cripps directed the economic policy. So really speaking there were three grades

of Ministers — in the first, the Prime Minister and three of his colleagues holding portfolios of Lord President of the Council, Foreign Secretary and Chancellor of the Exchequer; in the second, some Cabinet ministers who were collectively and departmentally responsible to Parliament; and in the third, Ministers who were not given Cabinet rank but invited to take part in Cabinet discussions in respect of their respective departments. Such a scheme of hierarchy of ministers has been regarded as a revolution in the structure of the Cabinet by Mr. Francis Williams\* in his *The Triple Challenge*. However, in 1951, Sir Winston Churchill devised a scheme for some supervising ministers as overlords who supervised some other ministries, e.g. Lord Woolton as Lord President of the Council supervised the work of Ministers of Agriculture and Food, Lord Leathers co-ordinated Transport, Fuel and Power and Lord Cherwell, the Paymaster-General co-ordinated Scientific Research and Development. In such a scheme the final responsibility to the Commons is difficult to locate and the departmental ministers suffer from a sense of inferiority. In July, 1962 Mr. Harold Macmillan entrusted Mr. R. A. Butler with the task of co-ordinating work of the European market negotiations and of Central African affairs.

The question of appointment of some ministers as supervisors or overlords leads us to the proper number of Cabinet Committees. Till 1919 excepting the Home Affairs Committee, no other civil committee existed. Since that date short-lived schemes were proposed, e.g. Economic Advisory Council in 1930, Lord President's Committee in 1942. Recently Sir John Anderson in his Romanes lecture on *The Machinery of Government* suggested that there should be six standing Cabinet Committees, one each for Defence, External Economic affairs, Internal Economic affairs, Foreign relations, Social services and Legislation. Each of these would include all ministers concerned with the subject and it would be presided

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\* He explains the revolution thus "For a Cabinet of equal departmental Ministers under a Prime Minister who is himself 'the first among equals' there has been substituted a pyramidal pattern of government designed to secure greater rapidity in action and a tighter centralised control of greater political strategy".

over either by one of the departmental ministers or by a minister without portfolio. All matters of policy would come first to one of these committees and if possible be decided there. Only the more important matters could be remitted to the Cabinet itself. For the success of the scheme a highly competent staff and the recognition of the doctrine of collective responsibility of each Standing Committee would be necessary. As has been stated before, the substance of this scheme has been accepted and implemented in creating the heads of co-related departments.

Professors Keith and Gibbs in *The British Cabinet System* have discussed the merits and demerits of proportional representation, referendum, parliamentary committees, and devolution of authority for reduction in the powers of the Cabinet. None of these plans has been accepted by the British people in general.

## CHAPTER XIII

### THE ADMINISTRATION

#### I. The Central Departments of State

A hundred years ago the State used to confine its activities to the safeguarding of life and property of citizens and to the maintenance of law and order within the community. Now that the Police State has been transformed into the Welfare State, the functions of government have increased enormously. With the increase in the functions of government, new Departments, Boards and Councils have been created in large number. At the beginning of the eighteenth century there were only nine Departments, the Treasury, the Privy Council Office, the Privy Seal Office, the Admiralty, the Offices of the two Secretaries of State, the War Office and the Post Office. To these were added in the nineteenth and twentieth centuries the offices of the Secretaries of State for Dominions, Colonies, India, Scotland, Burma, and Air, and the Board of Trade, the Board of Education, the Ministry of Agriculture and Fisheries, the Ministry of Labour, the Ministry of Health, the Ministry of Transport, the Ministry of Pensions and the Office of Works. During the War new Departments like the Ministry of Supply, the Ministry of Food, the Ministry of Information, the Ministry of Shipping, the Ministry of Economic Warfare and the Ministry of Aircraft Production have been set up. Besides these chief Departments, there are other minor Departments, like the Department of Overseas Trade, the Mines Department, Pay Master-General's Office, Forestry, Charity and Ecclesiastical Commissions, which have a Member of Parliament upon them (and not a Minister) to answer for them in the House of Commons. Some other Departments like the Exchequer and Audit Department, the Royal Household, the Offices of the Duchy of Cornwall and the County Palatine of Durham, the Lord Great Chamberlain's Department, the Herald's College are not represented in Parliament at all.

The Treasury is the oldest and the most important of all the Departments. Its origin dates back to the Norman times.

In the reign of William I, a separate board and court for matters of revenue was appointed after the model of the Exchequer of Normandy, and a treasurer and other officers were appointed for transacting business relating to the royal revenue. Odo, Earl of Kent, was the earliest holder of this office, but the early treasurers were for the most part Churchmen. The functions of the treasurer were often discharged by the Chief Justiciar, and the two offices became separate only in the reign of Stephen. In the Plantagenet period the Treasurer came into prominence, under the title of Lord High Treasurer and in the Tudor age he superseded the Lord Chancellor as the first Officer of the Treasury. As the Lord Chancellor ceased to attend the Treasury, the Chancellor of the Exchequer (originally a clerk of the Treasury) began to fix the Great Seal on the Treasury documents. The office of Lord High Treasurer was for the first time put into commission by James I. The post of the Lord High Treasurer was never filled up in the Hanoverian period, and the office may be said to have become extinct now. From the accession of George I the functions of the Treasury began to be exercised by a Board. But the Board ceased to transact business in a collective capacity after 1825. An Act of Parliament in 1849 provided that documents, including requisitions for money emanating from the Treasury would be void if signed by any two of the five Lords of the Treasury.

The first Lord of the Treasury is usually the Prime Minister himself, but most of the work of the Treasury is performed by the Chancellor of the Exchequer, who is the 'Second Lord.' There are three other 'Junior Lords' of the Treasury, who work as Whips of the Government, that is, manage to secure the attendance of the supporters of the Government in the House of Commons at the time of voting on all important measures. Curiously enough the Chancellor of the Exchequer is the head of the Treasury and not the head of the Exchequer. The business of the Exchequer is to see that the money voted by Parliament is spent according to law, and this work is now discharged by the Comptroller and Auditor-General, who is not a Minister and whose salary is a non-votable item of expenditure. The Chancellor of the Exchequer, on the other hand, is an important member of the Cabinet. He is, according to Heath, "answerable to Parliament for the due collection of the public



revenue, the means by which it is raised, the loans by which it is supplemented, the taxes imposed, the remissions and exemptions allowed, the custody of Public balances, the broad outlines of the public expenditure, and the preservation of equilibrium between the expenditure and the revenue. He is responsible also for all government measures affecting currency and banking, local loans, and financial matters generally." He is assisted by the financial Secretary to the Treasury, who is the most important of the junior Ministers. The Parliamentary Secretary to the Treasury is the Chief Government Whip in the House of Commons. Like all other Departments, the Treasury, too, has got its Permanent Secretary, who is a member of the Civil Service, and therefore, a non-political officer. He is in charge of the three main sections of the Treasury, *viz.*, (1) the Department of Establishments, which deals with the staff of the government Departments and matters related thereto; (2) the Department of Supply Services, which deals with the other financial business of the Departments and (3) the Department of Finance, which administers the fiscal business of the Treasury.

The Treasury is responsible for the preparation of the estimates of revenue and expenditure and co-ordination of economic policy. It exercises a rigorous control over the spending Departments. It collects the revenue through the Board of Customs and Inland Revenue, the Post office, and the Commissioners of Goods, Forest and Lands. It proposes new taxes and sees that all the Departments of Government have the necessary funds. It exercises a rigorous control over expenditure, specially in the form of preparing the estimates or supervising their preparation. It initiates and carries out measures affecting the public debt, currency and banking and prescribes the manner in which the public accounts shall be kept. The Treasury alone can transfer a surplus in the Army and Navy from one Vote to meet a deficit in another.

There are at present six Secretaries of State. All of them derive their origin from an officer of humble rank, known as the King's 'clerk' or 'secretary'. In the Tudor period the office of the Secretary of State became very important. Henry VIII created the post of a second Secretary equal in power to the first. In the reign of Elizabeth, William

Functions of  
the Treasury

History of the  
Secretaries of  
State

Cecil and later his son, Robert became known as 'Our Principal Secretary of Estate'. The Secretary was a member of the Privy Council ; he was the King's mouthpiece for declaring the will of the Crown and the sole channel of approach to the monarch. The King's signets or seals were in the custody of the Secretaries, and all warrants were sealed with them. A third Secreaary of State, that for Scotland was created in 1708 and abolished in 1746. Again, in 1768 a Secretary for colonies was appointed, but the post was abolished in 1782, when the American Independence was recognised. At the same time (1782) the two old Secretaries came to be known as the Secretaries of Foreign Office and of Home Office. In 1794 a third Secretary, that of War came into existence on account of the French War. The business connected with the Colonies was entrusted to the War Secretary in 1801. The two offices, however, became separate at the end of the Crimean War in 1854. When India was transferred from the East India Company to the Crown (1858) the fifth Secretary, that of India was created. The post has been abolished after the achievement of independence of India. A separate Secretary for Scotland was appointed again in 1885. The Colonial Office had two divisions, namely the Colonies and Protectorate division, and the Dominions division between 1907 and 1921, but at the latter date a Middle East Department was added to it. In 1925, the Dominions office was erected. But the Secretaryship of the Dominion and the Colonial Offices were held by the same person upto 1930, when they were entrusted to two different persons. On the separation of Burma from India in 1935 a separate Secretaryship was created for Burma, though it continued to be held by the Secretary for India. The Secretary for Air was appointed for the first time in 1918. In July, 1962 Mr. Harold Macmillan has reviewed the Elizabethan practice of calling one of the secretaries as the First Secretary of State. Mr. A. R. Butler holds this post now.

The Home Secretary appointed first in 1782 is the principal Secretary of State. He is in charge of law and order, magistracy, the Metropolitan Police, prisons, factories and mines. He advises the King on the exercise of prerogative of mercy. He grants certificates of naturalisation and countersigns all warrants. He has also duties in respect of theatres, cinemas, habitual drunkards, sale of liquors, lunatics, and with regard to the

The Home Office

safe-guarding of children against White Slave Traffic. The Home Office sees to the registration of voters and supervises elections.

The Foreign Secretary comes more frequently in contact with the Sovereign than any other Secretary. The Foreign Office It is he who introduces foreign Ambassadors to the Monarch. The Monarch usually goes through all important despatches to foreign Governments.

The Commonwealth Relations office set up in 1947, which maintains relations with Canada, Australia, Newzealand, India, Pakistan, Burma and Ceylon works in close co-operation with the Foreign Office. In July, 1962 the offices of commonwealth secretary and colonial secretary have been combined.

The three defence Departments of the Admiralty, the War Office, and the Air Ministry have now been put under the Ministry of Defence though they maintain their separate organization. The Ministry of Defence Supply and the Ministry of Pensions are sometimes grouped with the Defence Services.

The Ministry of Local Government and Planning, the Ministry of Education, the Ministry of Health, and the Ministry of Agriculture and Fisheries work closely with local authorities. The Ministry of Economic and Social Matters Labour and National Service and the Ministry of National Insurance are some of the ministries concerned with economic and social matters.

The office of the Postmaster General dates back to 1710, although some postal arrangement existed as early as the sixteenth century. The rights and duties of this department were defined by a statute of 1837.

The Board of Trade, the Ministry of Transport, the Ministry of Civil Aviation and the Ministry of Fuel and Power have been grouped together since 1951. They are concerned with the trade, transport, electricity etc. These ministries carry on the work in close relation with the Public Corporations.

In 1817 the Local Government Board was formed to concentrate in one department the general control over matters of public health, relief of the poor and Local Government. Its duties were performed by its President. The Board has been superseded by the Ministry of Health in 1919.

The Board of Works was created in the year 1851. Like the Board of Trade it is a phantom body and its duties are performed by the First Commissioner of Works.

A Board of Agriculture was established in 1899 under the Presidency of a Parliamentary chief. The control of Fisheries was handed over to it in 1903. The Board has been superseded by the Ministry of Agriculture and Fisheries in 1919.

The office of the Lord Chancellor was created in the reign of Edward the Confessor. He was the head of the King's Secretaries and Chaplains, the "Keeper of the King's Conscience" and the custodian of the King's Great Seal. No grant could be made by the King without the Chancellor affixing the Great Seal. He was at first a subordinate of the Justiciar. But the office of the Justiciar disappeared in the reign of Henry III and thenceforward the Chancellor was the leading Minister of the Crown. He became the head of the whole legal system and especially of the court of Chancery in the reign of Edward III. The political importance of the office somewhat dwindled in importance in the sixteenth century when the Secretaries rose to prominence. But the Lord High Chancellor is still one of the greatest and most honoured officers of the State. He presides over the House of Lords, acts as Custodian of the Great Seal, controls Law courts and regulates legal practice and procedure.

The office of the Lord Privy Seal was created in the fourteenth century to check the power of the Chancellor. His duties were abolished in 1884 and though the office still exists yet it has got no work to do. In July, 1962 Mr. Harold Macmillan has created the post of First Secretary of State and has entrusted it to his Deputy Prime Minister, Mr. R. A. Butler.

## II. The Privy Council

We have seen in the history of the Cabinet that the functions of the Privy Council have been taken over by the Cabinet.

The Privy Council      The Privy Council now meets only to transact some formal duties. Six different kinds of powers are delegated by Parliament to the Privy Council :—(a) the power to lay down general rules, *e.g.*, as to the administration of workhouses ; (b) to issue particular commands, *e.g.*, to the local authorities that have failed in duty ; (c) to grant licenses ; (d) to remit penalties ; (e) to order inspection and (f) to hold enquiries, *e.g.*, as to a railway accident. But these powers are exercised by the Departments, which have sprung from the Privy Council. The Judicial Committee of the Privy Council is the highest court of Appeal for some of the Dominions.

The Privy Council at present consists of more than three hundred persons. All Cabinet ministers, present and past, other officers of State, the two archbishops and the Bishop of London, some of the highest judges and ex-judges, a few colonial statesmen, large number of Peers and others who are given the title of Privy Councillor for their political, literary, scientific or military services, are the members of the Privy Council. The customary quorum in a sitting of the Privy Council is only three.

Other Ministers      The Ministry of Labour (1916), the Ministry of Transport (1919), the Ministry of Pensions (1917) and the Department of Scientific and Industrial Research (1916) were created after the outbreak of the first World War. By June 1940, the number of "Departmental ministers" rose to 27, as by that date the Ministers of Supply, Food, Information, Economic Warfare, Shipping and Aircraft Production were created.

Need of co-ordination      Government is an organic whole, and the different Departments of State cannot be separated from one another by watertight compartments. The activities of one department impinges upon the work of another department. There must be, therefore, a comprehensive plan for co-ordinating the activities of various departments. Dr. Jennings gives an example of the urgency of co-ordination in the problem of food supply to the

civil population in war time. "Distribution is the business of the Ministry of Food, but production in Great Britain is controlled by the Ministry of Agriculture and Fisheries and transport by the Ministry of Transport. The Ministry of Shipping must see that ships are available to bring supplies from overseas and the Admiralty and the Air Ministry that they be conveyed. Nobody can do anything unless the Treasury finds the money. Transport requires coal and petrol, controlled by the Mines Department and Petroleum Department respectively. Foreign Trade is the business of the Board of Trade, but it involves wider aspects of foreign policy which are within the jurisdiction of the Foreign Office. Much of our supply comes, however, from the British Empire overseas, so that the Dominions Office, the Colonial Office, and the India and Burma Offices are necessarily concerned." The work of co-ordination is done, though rather imperfectly, by the Cabinet, and by the personal interview and correspondence between the heads of different departments.

### III. Classification of functions of the Departments

The functions of the numerous Departments of Government may be classified under seven heads, namely ; Defence, External Relations, Administrative control, Direct services, Enforcement of Law, Assistance to private Enterprise and Ancillary services.

The armed forces are controlled by the Defence Department through the Admiralty, the War Office and the Air Ministry with the help of the Board of Admiralty, the Defence Army Council and the Air Council, all composed of senior officers of the departments.

These three Defence Departments are responsible for the raising of the forces by voluntary enlistment, the provision of equipment, armaments, munitions, the allocation of force and the provisions of accommodation etc.

The external relations are mainly in the charge of the Foreign Office and the Commonwealth Relations Office though the Colonial Office is also concerned with the external policy of the Colonies to a limited extent. The Diplomatic and Consular services have to work under the Foreign Office. The function of the



Foreign Office is to collect information on which political decisions can be taken by the Foreign Secretary.

Many of the important government functions are discharged by the local bodies and semi-public Boards and Commissions. The administrative control over them is exercised by a number of central departments. The local bodies in English control police service, education, transport undertakings, gas undertakings and dock and harbour undertakings. They are responsible, however, to the Home Office for Police, to the Board of Education for education, to the Ministry of Transport for transport, to the Board of Trade for gas etc. The Ministry of Health also exercises much control over the local bodies.

The Post Office, the Ministry of Labour, the Ministry of Health and the Ministry of Pensions provide service directly for the benefit of citizens. The Ministry of Direct Service Labour helps workers to find employment, provides assistance to the unemployed through the Assistance Board, gives supplementary pensions to widows and aged people, directly administers unemployment insurance system. The National Health Insurance system and Widows', Orphans' and Old Age Contributory Pensions systems are administered by the Ministry of National Insurance. But the provision of war pensions is in the charge of the Ministry of Pensions. The Ministry of Health has duties relating to the health of mothers and young children, to the medical inspection and treatment of school children, to the protection of infants, to the health of disabled officers and men after they have left the service and any other similar subjects.

In India the police is in charge of the State Governments. But in England the local authorities control the police, though the Metropolitan Police is directly controlled by the Home Office. The Central Government in England pays half the cost of maintaining the police to the local authorities, and the Home Office exercises a general supervision over this particular work of the local bodies. The Home Office is also responsible for the factory inspection and the control of explosives and aliens ; but the employment of aliens is under the Ministry of Labour ; which has also taken over the charge of factory inspection during the

war. The Mines Department of the Board of Trade inspects mine, and the Board of Trade is directly concerned with merchant shipping, bankruptcy, companies etc. The regulations regarding the control of plant and animal diseases are enforced by the Ministry of Agriculture and Fisheries.

Like the Indian State Departments of Industries, the Ministry of Agriculture and Fisheries in England used to provide information, technical assistance and Assistance to general help\* in other ways. But in recent private times the Ministry is giving financial assistance to private enterprises, and as such is assuming greater control over them. Similarly, the Mines Department has now powers of control through the Coal Commission over the coal mines.

The most important ancillary service is the provision of money and the control of government expenditure. This service is discharged by the Treasury, which has established efficient control over the departmental estimates and over contracts. The exercise of financial control has also vested in it the control over the Civil Service. The buildings and furniture required by the Government Departments are provided by the Office of Works.

Besides classifying the Government Departments according to their functions, we may describe, in a general way the economic functions discharged by the various departments and Boards and Commissions. The Board of Trade, the Ministry of Transport, the Ministry of Agriculture and Fisheries, the Ministry of Labour, the Ministry of Pensions, the Office of Works are concerned with the promotion of economic activities. The Board of Trade is empowered by the Import Duties Act of 1932 to impose special duties on imports from countries which discriminate against British trade. The Mines Department, the Bankruptcy Department, the Companies (winding up) Department, the Patent Office are subordinate to the Board of Trade. The Marine Department of the Board deals extensively with merchant shipping and seamen. The Ministry of Transport looks after railways, canals, waterways, inland navigation, tramways, roads, bridges and ferries, vehicles and traffic, harbours, docks and piers. The Central Electricity Board and the London Passenger Transport Board are connected with the

Ministry of Transport. The Ministry of Agriculture and Fisheries administers subsidies provided for beet sugar and cattle and is partly responsible for setting up Marketing Boards. Financial assistance to agricultural producers may be given by the Mortgage Corporation.

#### IV. Boards and Commissions as Administrative Bodies

The growth of economic activities of the State in the twentieth century has raised serious problems in administration.

In England there is intense dislike of  
The Problem of "political interference" from popular re-control

representatives or public officials in business concerns. But it is not possible to allow the business concerns of the State to exercise complete autonomy, free from public criticism or political control at any stage. A solution has been devised by the organisation of Boards and Commissions, which are semi-independent bodies with ministerial responsibility for general policy instead of detailed control and day-to day supervision. The industrial establishment of Government, including the Post Office employ in normal peace time about three lakhs and thirty thousand persons. A brief survey of some of these establishments will show how far the economic activities of the State are under the control of Parliament.

The earliest of the Boards to be set up to control economic activity was the *Mersey Docks and Harbour Boards* created in

1857 to control the Port of Liverpool. It is  
Control of Docks administered by a Board of 28 of whom 24  
and Ports are elected by the dock-ratepayers and 4

4 nominated by the Minister of Transport. The Minister of Transport simply fixes the maximum charge and receives the annual report from a special auditor appointed by him. In all other respects the Board is autonomous. *The Port of London Authority* was created on the same lines in 1908.

The most important of Public Corporations are the National Coal Board created in 1947. It owns and controls all British

coal mines and plays a very important part  
The National in the economic life of Great Britain. It is  
Coal Board managed by a body of nine experts and has

got 48 area offices and 9 divisional boards. It works in cooperation with the Ministry of Fuel and Power.

The British Broadcasting Corporation (BBC) has been set up in 1926. It has a monopoly in broadcasting service. The Prime Minister in consultation with the Postmaster-General appoints seven governors to manage the affairs of the Corporation. The Director of the BBC receives £6500 to £8000 a year, which is higher than the salary of any Minister, excepting that of the Premier. The Postmaster-General is responsible for its general policy, but not for details and Parliament cannot elicit any information regarding details by questions.

The Electricity Commission was set up in 1919, but it was not given compulsory powers to unify the system of supplying electricity. So in 1926 the Central Electricity Board was created with powers of buying up the other Electric Supply Companies and of borrowing up to £60 million. The Electricity Commissions now exercise functions of a licensing and supervising nature. Neither of the bodies depend on supplies from Parliament; they get their funds by a levy on the supply industry. They are appointed by the Minister of Transport indeed, but are not subject to day-to-day control either by him or by the Treasury. The members of the Central Electricity Board cannot be Members of Parliament. The Chairman of the Board gets £7000 a year as salary.

The London Passenger Transport Board has been given monopoly powers over the transport facilities in London in 1933. The members of the Board are appointed by a body of "Trustees" consisting of the Chairman of the London County Council and of the Committee of London Clearing Bankers, the Presidents of the Institute of Chartered Accountants and of the Law Society, and a representative of the Home Counties Traffic Advisory Committee. The Chairman of the Board draws a salary of £ 12,500, which is higher than the salary of the Prime Minister, and the Vice-Chairman gets a salary equal to that of the Prime Minister, namely £ 10,000 a year. But it is curious to note that over such an important Board neither the Minister nor the Trustees exercise any control. "Neither the Minister", writes Greaves, "nor the trustees are responsible for the policy of the Board, which answers to no one, although there is, of course, an annual report to the Minister."

Other important Boards and Commission are the *Area Traffic Commissions* (1930), entrusted with the function of licensing the motor-bus services throughout the country ; the Unemployment Assistance Board (1934), and the Agricultural Marketing Boards (1931 and 1933). There is as yet in Great Britain no Minister for Economic Affairs to co-ordinate the activities of public utility services.

## V. The Civil Service

The Civil Service in England has expanded enormously during the last hundred years mainly on account of the expansion of the sphere of activities of the State. At the time of Sir Robert Peel, the Civil Service consisted of not more than forty thousand people, but at the end of 1946 the number increased sevenfold. But only 4,000 of these are expected to form the driving force of the whole bureaucratic machine.

The Civil Service may be divided into four grades : *viz.* administrative, executive, clerical and typing classes. At the top there are some 4000 men and 600 women of the administrative grade who prepare the material from which decision and policy is made by ministers. They occupy the key positions in the administrative system. They are the products of the public schools and the Universities of Oxford, Cambridge and London. Their salary varies from £ 275 to £ 4500 a year. In 1945 the pay scales of all members of Civil Service have been raised. Now the administrative class is the executive class consisting of some 34,324 men and 9,550 women, who perform the work of the supply and accounting departments. Next comes the clerical and sub-clerical employees whose number is 1,27,991 men and 1,67,342 women, employed as inspectors in different departments, 38,253 men and 2817 women employed in professional, technical and scientific work ; 2,43,204 workers in industrial establishments under the Government. Besides these, there are 30,850 men and 13,021 women employed as messengers, porters etc. Over and above these there are 72,722 part-time workers.



“The present organization of the Civil Service,” writes Finer, “is marked by three outstanding characteristics ; Treasury control to unify and co-ordinate the work and organisation of the department ; the Civil Service Commissioners as the creators and custodians of standards of efficiency ; and

the attempted connection between the ages at which the various grades of the service are recruited and the educational system of the country”. We have already explained the nature of the Treasury control. The Civil Service Commission, consisting of three members, was created by an Order-in-Council in 1855. The Commissioners hold office ‘during Her Majesty’s pleasure’, and are not answerable to any Minister or Department. In India, many cases have occurred where the recommendations of the Provincial Public Service Commissions have been ignored by the Minister, but in England the acts and decisions of the Civil Service Commissioners are never questioned or overruled. The functions of the Civil Service Commission are (a) to “approve” the qualifications of all persons proposed to be appointed, whether permanently or temporarily, to any situation or employment in any of His Majesty’s Civil Establishment ; (b) to make regulations prescribing the manner in which persons are to be admitted to the civil establishment and the condition on which the Commissioners may issue certificate of qualification, and (c) to publish in the London Gazette notice of all appointments and promotions with respect to which certificates of qualifications are issued.” The Commission recruits candidates by written examinations and by interview. The highest class of Civil Service, to which some 1800 persons belong, come from the same social class and the same educational institutions from which the majority of members of the House of Commons come. The age limit of entering service is twenty-two and therefore, none but the highly educated class can enter it. The defect of recruiting them from a narrow class is that they are not able imaginatively to penetrate the experience of the working classes with whose problems they have now to deal mostly. No Civil Servant of higher grades is allowed to take any part in politics. He may not belong to a trade union affiliated with any outside body.



## VI. Relation between the Civil Service and Ministers

It was possible for Peel and Gladstone to look into the details of administration, but now that the personnel of the

<p>Details in the hands of the Civil Service</p>	<p>Civil Service has increased twelve-fold and expenditure more than hundred-fold, no Prime Minister can look into details, nor can any other Minister hope to master all the</p>
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facts relevant to his Department. Now-a-days routine and minor discretion are left to the Executive class. Thus, whether an unemployed person shall have slightly more than the official scale of unemployment assistance is decided by a Principal or Assistant Principal of a department. If a question is of wider importance, as for example, a housing scheme, it would be decided by one of the eight Principal Assistant Secretaries of the Ministry of Health. Departmental Policy is determined by the Permanent Secretary and the Minister. The position of the Permanent Secretary of a department is like that of a General Manager. "He exercises general control, he has the last word on proposals that go to the Minister, and the first word on proposals that come from the Minister." He collects and arranges every information which may be of help to the Minister in order to arrive at a decision. He indicates also what the Minister is to read. If the Minister is wise, he will confine his attention to those important things only. But a Minister who wants to read for himself all the huge files put up before him will simply be deluged by the unending details. But it should be noted that the final decision about Departmental policy lies with the Minister. It is he, and not the Permanent Secretary, who is responsible to the House of Commons. The whole Cabinet may be censured for a silly mistake made by a departmental head.

<p>Questions of wider principles go to the Cabinet</p>	<p>The Minister does not decide for himself those questions which concern more than one department, or require new legislation, or involve substantial expenditure, or which are likely to be discussed in the House of Commons. Such questions are sent to the Cabinet for discussions. But the Minister in charge of the department must formulate definite proposals supported by an elaborate memorandum.</p>
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The Cabinet as a whole is responsible for every important line of policy.

The characteristic feature of the English Constitution is the association of experts with amateurs. In the judiciary, the expert judge has to be guided by the amateur jury ; in Local Government the expert Town Clerk is controlled by the representatives of rate-payers, and in the central executive the expert Civil Service men are associated with and controlled by the amateur Ministers. A Minister has seldom an expert knowledge of the department which is put under his charge. He resigns his office with the resignation of the Prime Minister. He is like a bird of passage resting over a particular department for a time. So the actual work of a department is carried on under the guidance of its permanent Secretary and other senior officers, who are in the opinion of Dr. Jennings, "able men often more able than the Ministers whose orders they take." The experts, however, lack in that breadth of vision and touch with realities which are often to be found in politicians. Sir Warren Fisher, the permanent Secretary to the Treasury in his evidence before the Royal Commission on the Civil Service in 1929, pointed out the "Determination of policy is the function of Ministers, and once a policy is determined it is the unquestioned and unquestionable business of the Civil Servant to strive to carry out that policy with precisely the same goodwill whether he agrees with it or not. This is axiomatic and will never be in dispute. At the same time it is the traditional duty of Civil Servants, while decisions are being formulated, to make available to their political chiefs all the information and experience at their disposal, and to do this without fear or favour, irrespective of whether the advice thus tendered may accord or not with the Minister's initial view. The presentation to the Minister of relevant facts, the ascertainment and marshalling of which may often call into play the whole organisation of the department, demands of the Civil Servant the greatest care. The presentation of inference from the facts equally demands from him all the wisdom and all the detachment he can command."

In spite of this clear demarcation of the sphere between the Civil Service and the Ministry, charges of usurpation of

real authority in the State by the bureaucracy have been levelled in recent years. Thus Mr. Ramsay Muir Charge of Bure- contends that the Civil Service bring before  
 a Minister hundreds of knotty problems  
 bureaucratic control for his decision ; about most of them he knows nothing at all. "They put before him their suggestions supported by what may seem, the most convincing arguments and facts. Is it not obvious that, unless he is either a self-important ass, or a man of quite exceptional grasp, power and courage (and both of these types are uncommon among a successful politician) he will in ninety-nine cases out of a hundred simply accept their view, and sign the name on the dotted line ?" But this is an exaggerated view of the relation between Ministers and Civil Servants. A Cabinet which takes office with a definite programme and has the requisite support of the House of Commons cannot be hindered from carrying out its policy by the obstructionist methods of the Civil Service. Moreover, even in ordinary cases, the Ministers may be criticised in Parliament. The undoubted right of members of Parliament to ask questions and even to raise debates on grievances in individual and general cases acts as a real check which prevents delegation of powers to Civil Servants from giving rise to bureaucracy.

## VII. Administrative Tribunals

The practice of delegating to administrative departments the power to make rules under the Acts passed by Parliament has given rise to Administrative Tribunals.

Cause of rise of Administrative Tribunals When a department makes rules, it also issues orders for their enforcement. Cases arising out of administrative regulations are decided by quasi-judicial bodies composed of administrators and these are known as administrative tribunals in England. With every increase in the social and economic functions of the State, the practice of conferring judicial powers on the Departments is increasing.

At present the Departments have either formally or in practice, replaced the ordinary Court in deciding disputes

in wide fields of social obligation. For example, Workmen's Compensation cases used to be referred to the County Courts, but these courts used to take a very long time in deciding such cases and the judges were also not familiar with the technical questions in such cases. Litigation before the ordinary courts used to entail heavy expenditure. Now these cases are handled by an administrative tribunal, which provides cheap and speedy justice, because it can adjust its procedure to the particular case without being bound by rigid precedents. The National Insurance (Industrial Injuries) Act of 1946 has provided for the appointment of an Industrial Injuries Commissioner together with a number of Deputy Commissioners. An appeal from the Commissioner in the Workmen's Compensation case will lie with the local appeal tribunals set up by the Minister. The administrative tribunals are much better equipped than the regular courts in regard to matters like rent control, military service, national assistance, and patent cases. According to Prof. Robson they are particularly useful in an unexplored field like town and country planning where private property rights must give way to the new policy of social welfare.

There is a clear distinction between the outlook of Judges of regular Courts and that of administrative tribunals. The function of a Judge is to secure the proper enforcement of legal rights and duties. The primary function of an administrator is execution of a policy. But while adjudicating, the administrative tribunal should exclude from their minds the consideration of the possible effects of their decision on general administrative policy. There is no clear line of distinction between the judicial, quasi-judicial and administrative functions in the wide powers conferred on Government Departments. According to the Committee on Ministers' Powers, the judicial process has four characteristics :—(i) there must be representation, oral or written, of the case of each party ; (ii) facts must be ascertained by means of evidence and cross-examination ; (iii) argument by parties on points of law which may arise and (iv) decision on the matter, based on facts and the application of the rules of law, by which the Judge is bound. A quasi-judicial process in administrative tribunals seldom exhibits this fourth characteristic.

The powers vested in the Administrative Tribunals affect the interests of citizens vitally. Thus the Minister of Health, which in practice means an officer of his Department, can strike the name of a doctor off the panel under the Health Insurance Scheme, if he is convinced that the doctor is guilty of giving to a patient more expensive medicine than what the officer thinks desirable. The doctor can not go to the law court for getting his name re-instated, because the Act says that the decision of the Minister is final. This is an evil indeed. But the question is, can ordinary Judicial Courts deal with the vast mass of technical issues which arise under the laws and regulations of the present day? Laski thinks that the Departmental Tribunals are more suited to decide such questions than the law Courts, because the former have specialized knowledge, are easy of access, and are less expensive than the latter. Prof. Keeton, however, states that unfortunately costs of litigation are rising sharply in administrative tribunal cases at present. The Departments should not have the fixed determination to exclude an appeal to the ordinary Courts even on a point of law. Appeal, however, is possible only when it is provided for in the legislation that sets up the particular Administrative Tribunal.

Dicey in his *Law of the Constitution* took pride in the fact that in England there was no administrative Courts. Administrative Tribunals, however, have come to occupy a large place in the judicial system of England. Orthodox upholders of the Constitution see in them an infringement of the Rule of Law. The Committee on Ministers' Powers 1929 justified the existence of Administrative Tribunals as inevitable in a modern industrialized society. They pointed out that the Tribunals cannot act arbitrarily because they are composed of three members selected from outside interests as well as the agency concerned. Secondly, because there are oral hearings and written submissions and thirdly, because there is right of representation by lawyers or friends. They recommended that the policy or principles followed by the Tribunal and the basis for its decisions should be made public. But as yet there is little uniformity in practice amongst the Administrative Tribunals. While some Tribunals adopt procedure like those of

ordinary Courts, others are characterized by a high degree of informality.

### VIII. The Franks Committee Report on Administrative Tribunals and Enquiries

A large number of Tribunals, Advisory Bodies and Committees have grown up in England since 1914 and especially since the cessation of the second World War. In December 1958 it was revealed by the Financial Secretary to the Treasury that there were about 850 advisory bodies of a central or national character. Dr. K. C. Wheare has brought out a book called "*Government by Committee*", for studying this feature of constitutional development in England. Nearly two thousand Tribunals were at work. The function of these Tribunals is to settle disputes of fairly minor types relating to welfare legislation. They are largely availed of because the procedure is rather informal, speedy and cheap. The number of disputes relating to pensions, insurance, industrial injuries, health, engineering service etc. has increased enormously. The administrative tribunals set up by departments to hear appeals against awards in these cases roused much criticism. The Government, therefore, appointed a Committee on Administrative Tribunals and Enquiries under the chairmanship of Sir Oliver Franks in 1955. The Committee heard many important witnesses and published its report in July 1957.

The Report stated that administrative procedures should be characterized by openness, fairness and impartiality. It upheld the right of the individual to enjoy his property without interference from the administration unless the interference is unmistakably justified in the public interest. It recommended that in cases of disputes between individuals and the administration, preference should be given to an administrative tribunal rather than to a Minister.

The Committee thought that the existing tribunals should properly be regarded as machinery provided by Parliament for



adjudication rather than as part of the machinery of administration. The Parliament wants that the tribunals should be independent of Government. The Report recommends that a general appeal on points of law should be possible from all tribunals; legal representation should be possible in all cases; hearings should be public; reasons should always be given and independent Councils should be set up to supervise the working of the tribunals.

The Government decided to set up a single council for the supervision of all the Tribunals. The members of the council were to be appointed jointly by the Lord Chancellor and the Secretary of State for Scotland. The number of members was not to be more than fifteen nor less than ten. The Council is to submit an annual report of its work to the Parliament through the Lord Chancellor. The first report which was published in 1960, stated that about 2000 tribunals were under the Council's supervision.

Council to  
supervise the  
work of  
Tribunals

## CHAPTER XIV

### THE MONARCHY

#### I. The King and the Crown

The King is a person, while the Crown is an abstraction. Literally the crown is an inanimate object which is kept in the Tower of London, but when it is written with a capital C, it stands for the kingship as an institution. The Crown, according to Sir Sidney Low is "a convenient working hypothesis" to which belongs all the powers and prerogatives of the ancient Kings of England. Munro describes the Crown as an "artificial or juristic person" which never dies. Dr. Ogg has given a concrete definition of the Crown in the following words: "It is the supreme executive and policy-framing agency in the government, which means, practically, a subtle combination of sovereign, ministers (especially cabinet members), and to a degree Parliament. It is the institution—if so abstract a thing can be called an institution—to which substantially all prerogatives and powers once belonging to the King in person have gradually been transferred."

The trend of British history in the seventeenth and eighteenth centuries was to transform the king-as-a-person to the king-as-an-institution. Most of the powers of the King are now exercised by the Ministers who are responsible to Parliament. One of the consequences of such transformation is the emergence of doctrine, "The King can do no wrong." The doctrine not only means that the King is not liable for any act personally done by him, but also that "as the King can do no wrong, it follows he cannot authorise wrong." If a Minister takes recourse to any illegal action, he cannot plead the orders of the King in extenuation of his crime. The Ministers are responsible for everything done by them. Every order, purported to have been issued by the King, must be counter-signed by a minister. The minister, thus, assumes responsibility for the order. "The essential and peculiar character of the English Constitution is," observes Adams, "that the King has remained in theory and in the letter of the law absolute; he is still in form, the source of all authority, the acts of the government are his acts, the

officers of the State are his servants, while in reality, by various institutions, statute laws, and conventional practices having the force of law, he has hedged about by limitations, and the true sovereignty, the final power of decision in all questions of importance, has been transferred to the people who form the nation and who act through their elected representatives."

## II. Powers of the Crown

The powers of the King have diminished but those of the Crown have increased. This is due to the assumption of responsibility in wide spheres of activity by the State. In every modern state today numerous powers have to be left to the discretion of the executive, which in the United Kingdom, are exercised in the name of the Crown. Practically every statute enacted by Parliament gives some new powers to the Crown. "All told", observes Lowell, "the executive authority of the Crown is, in the eye of the law, very wide, far wider than that of the chief magistrate in many countries, and well-nigh as extensive as that now possessed by the monarch in any government not an absolute despotism ; and although the Crown has no inherent legislative power except in conjunction with Parliament, it has been given by statute very large powers of subordinate legislation.... Since the accession of the House of Hanover the new powers conferred upon the Crown by statute have probably more than made up for the loss to the prerogative of powers which have either been restricted by the same process or became absolute by disuse. By far the greater part of the prerogative, as it existed at that time, has remained legally vested in the Crown, and can be exercised today." Some of the powers of the Crown are derived from his prerogative, which has been defined by Dicey as "the residue of the discretionary or arbitrary authority at any time legally left in the hands of the Crown." Some powers are derived from statutes, while others from prerogative as modified by statute.

Writing about a century ago, Bagehot gave a long list of what Queen Victoria could do without consulting Parliament. The list is really a list of the powers of the Crown, and not of the monarch as a person. Thus he wrote : "The Queen could disband the British Army, could dismiss all the officers and the sailors. She could sell off all her ships

Extension of the  
powers of the  
Crown

Example of  
the powers of  
the Crown

of war and all her naval stores and could make a peace and begin a war and cede territory. She could make every citizen in the United Kingdom, male or female, a Peer and every parish in the United Kingdom a university. She could dismiss most of the civil servants and pardon all offenders. In a word the Queen could by prerogative upset all the actions of the civil government, could disgrace the Government by a bad war or peace, and could, by disbanding our forces, whether on land or sea, leave us defenceless against foreign nations." These are, no doubt, the legal powers of the Crown which the Cabinet can lawfully exercise. But no Cabinet would be mad enough to do a thousandth part of these for fear of public opinion.

The Crown appoints all higher executive and administrative officers, all judges and officers of the army, navy and air services.

Executive and Administrative powers of the Crown      All of these officers except the judges may be also dismissed by the Crown. The Crown enforces laws, supervises and directs the administration, collects taxes and spends the amount sanctioned by Parliament. It appoints

and sends out ambassadors, ministers and consuls and receives foreign ambassadors. The Crown can declare war and make peace without consulting Parliament, but the money for carrying on a war must be sanctioned by the Parliament. The local Government is, to a certain extent, under the control and supervision of the Crown. The Statute of Westminster has shifted the responsibility for the appointment of Dominion Governor from the Home to the Dominion Government. The King, however, is consulted in the selection of the Governor and he has to approve of the appointment ; but if he refuses to sanction the selection made by a Dominion Government, the latter would call his action unconstitutional.

The Crown has lost the power of making, amending or repealing statutes, applicable to the United Kingdom and the

Legislative powers of the Crown      Dominions. The veto power of the Crown too has fallen into disuse. But the Crown can still repeal, suspend, and alter laws relating to the Crown Colonies. With regard to the

United Kingdom, the Crown can still issue Orders-in-Council in pursuance of power conferred by Parliament. It has already been explained how the scope of 'delegated legislation' made by the Executive has increased in recent years.

The Crown exercises considerable power over the composition of the House of Lords, as it can create as many Peers as it likes. The House of Commons can transact business only during the pleasure of the Crown, because it is summoned, prorogued and dissolved by the Crown.

The Crown has lost the power of creating courts and of altering jurisdictions of existing courts, which can be done by Parliament only. But, the Crown can appoint judges, though they cannot be dismissed without a resolution of both the Houses of Parliament. The final appeal from the colonies lies to the Crown and is heard by the Judicial Committee of the Privy Council. The Crown can exercise at its discretion the power of pardon and reprieve in connection with criminal offences.

The Crown appoints Deans, Bishops and Archbishops of the Anglican Church. The convocations of Canterbury and York can meet only by license of the Crown. The Crown as "the fountain of honour" creates Peers and confers knighthood and other dignities.

The Crown exercises these vast powers through the Cabinet, the Privy Council and its Committees and by Boards and Commissions. Some important functions, like the selection of Prime Minister, are still discharged by the King in person.

### III. Changing attitude towards Monarchy

The importance of the monarch to-day is mainly due to the fact that she has changed active political power for indirect political influence. This influence, however, depends on the personality, experience and wisdom of the occupant of the throne. Monarchy, as an institution, fell somewhat in the background in the first half of the nineteenth century. George III remained insane during the last years of his reign. George IV and William IV led such irregular life that they could not command the respect of the people. Queen Victoria was not at all popular during the first forty years of her reign. At the time of her accession she was young and inexperienced. The Tory Prime Minister, Peel, did not like that she should be surrounded by Whig ladies and demanded the dismissal of the ladies of the Bed Chamber.

Victoria refused to accede to the demand of Peel and, therefore, was publicly hissed in the highest circles. After her marriage she was suspected of being under the influence of her German husband especially in conducting the foreign policy. The dismissal of Palmerston from the Foreign Office in 1851 heightened her unpopularity. The Queen retired from public life in 1861 when she became a widow. She had a large income, but instead of maintaining a decent court, she went on saving money for her numerous sons and daughters. Parliament was reluctant to grant money for the marriage for her daughters to the small German Princes. The unpopularity of the Queen rose to such a height that in 1871 a regular movement began for abolishing monarchy. At a meeting attended by fifteen thousand people in 1871, the Republican Club in London was founded. Charles Bradlaugh, the first President of the Club said, "The monarch does not take, and for more than a century and half has not taken, any active and initiatory part in any movement for the promotion of our national or social welfare." Important political figures like John Bright, John Morley, Sir Charles Dilke and Joseph Chamberlain were among the Republican sympathisers.

The very excess of the attack of the Republicans brought about a conscious attempt to popularise monarchy and led to the collapse of the Republican group. Disraeli induced the Queen to come out in public and increased her popularity by proclaiming her as Empress of India. The long years of retirement had surrounded the Queen with an air of mystery. The new generation, which had arisen between 1837 and 1879, was accustomed to think of her as a part of the accepted and inevitable order of things. Moreover, she was considered 'neither able nor likely to be a danger to good government'. Edward VII was immensely popular for his congenial manners. One of the causes of popularity of George V was that he was supposed to be above party politics. Another cause was the manifestation of royal interest in the welfare of the working classes. This was probably due to the realisation of the increasing importance of labour in politics. The third cause, which is very important to-day, is the attitude of the Press towards monarchy. The newspapers have to cater to the taste of the masses, who always want some concrete object of worship, and royalty is put before their vulgar eyes. "The doings of

Growing popu-  
larity of  
Monarchy



royalty" observes Greaves, "provide one of the most valued types of human story for which the editor is always looking. The result is that solely those facts which are to the credit of royalty are reported, and that there is gradually built up around it a myth of perfection, a stereo-type which, however vague it may seem, is a political reality of importance in the country's system of government."

In the reign of Queen Victoria, the Civil List was granted at the beginning of the reign for life indeed, but additional grant on the marriage or coming of age of a prince was voted separately from time to time. Those occasions used to give rise to discussions. Now all these expenses are provided for at the beginning of the reign, and this practice has completely removed the monarchy from public discussion.

#### IV. Value of the British Monarchy

The people of the United Kingdom gladly spend more than £650,000 a year for maintaining kingship, because of some valuable services rendered by the institution

Views of Jenks : of monarchy. It is difficult for foreigners  
A symbol of unity to understand the psychology of the English people in such a delicate matter. We will, therefore, confine ourselves to several quotations from the recognised authorities on the polity of England. Sir Edward Jenks observes, "In the first place the King supplies the vital element of personal interest to the proceedings of government. It is far easier for the average man to realize a person than an institution. Even in the United Kingdom, only the educated few have any real appreciation of such abstract things as Parliament, the Cabinet, or even the Crown. But the vast mass of the people are deeply interested in the King as a person, as is proved by the crowds which collect whenever there is a chance of seeing him ; and it is possible that the majority of the people, even of the United Kingdom, to say nothing of the millions of India, believe that the Government of the Empire is carried on by the King personally. He, therefore, supplies the personal and picturesque element which catches the popular imagination far more readily than constitutional arrangements, which cannot be heard or seen .... Very closely allied to this personal character of the King is the great unofficial and

social influence which he wields, and not he alone, but the queen, and in a lesser degree, the other members of the royal family. Their influence in matters of religion, morality, benevolence, fashion and even in art and literature is immense."

"A king who is fully informed of affairs becomes, in course of time, if he is an able man, an unrivalled storehouse of political experience. Ministers come and go ; they are swayed, it is to be feared, by the interests of their party as well as by those of the State ; they may have had to make, in order to obtain support, bargains which tie their hands ; they have ambitions for the future which they are loath to jeopardize. Not so the king. He is permanent ; is above all parties ; he does not bargain for places and honours ; he has nothing in the way of ambition to satisfy except the noble ambition of securing his country's welfare. So he can say to his ministers, with all the weight of his experience and position, 'Yes, I will, if you insist, do as you wish ; but, I warn you, you are doing a rash thing. Do you remember so and so ?' Only, the king must not give his warning in public, he must not *seem* to overrule his ministers. But a minister will, unless he is an exceptionally rash person, think many times before disregarding a warning from the king."

The social value of monarchy is admitted even by the English socialists. Sidney and Beatrice Webb in their "*Constitution for a Socialist Commonwealth of Great Britain*" wrote : "If we pass from the constitutional theory of the text-books to the facts as we see them today, what we have to note is that the particular function of the British monarch—his duty as king—is not the exercise of governmental powers in any of its aspects, but something quite different, namely, the performance of a whole series of rites and ceremonies which lend the charm of historic continuity to the political institutions of the British race, and which go far under present conditions, to maintain the bond of union between races and creeds of the Commonwealth of Nations that styles itself the British Empire."

The political importance of monarchy is emphasised by Dr. Jennings in the following words : "Neither George V nor George VI would lay claim to more than industry and common sense. These, however, are qualities which, if used at the centre of affairs, can be extremely valuable. Few of our ministers are more than

- plain men. The nation could throw up thousands of men as competent as Mr. Baldwin or Mr. Chamberlain. In fact, the British people has a suspicion of intellect and imagination, except in war time. The King, like a minister, has a part to play in public. Like the President of French Republic he has to be a *bon bourgeois*.... A king who can keep his head (metaphorically) can do immense good, simply by injecting a little common sense."

It is said the King is the symbol of the empire, and a link between the members of the Commonwealth of Nations.

The King as an essential element in imperial unity

According to the Preamble of the Statute of Westminster, the main function of the King is to act as a "symbol of the free associations of the members of the British Commonwealth of Nations" The Dominions refuse to be subordinate to the Government at Westminster, but they willingly owe 'allegiance' to the Crown. The King, we are told, can take a Commonwealth rather than a purely British view of Commonwealth relations and can influence the British Government accordingly. But in the opinion of Laski, "British imperialism has deliberately elevated the prestige of the Crown as a method of protecting the ends it seeks to serve". "It is relevant in this connection", he further observes, "to remember that the elevation of the Crown's imperial prestige dates from the discovery of the commercial value of India ; we did not hear of this aspect of its importance when the colonies were 'like wretched mill-stones round our necks'. The unity of the empire will be maintained so long as it is valuable to its constituent parts to mention it. While that value persists, the Crown will necessarily have value as the symbolic representation of that unity."

#### V. Part played by Queen Victoria and her successors in the government of the country

Bagehot in his classical account of the English Constitution stated that the monarch had only three

Part played by Victoria

informal or political rights—"The right to be consulted, the right to encourage and the right to warn." But the publication of the *Letters of Queen Victoria* has shown that Bagehot over-simplified the intricate problem of the relation between the Queen and her ministers. The Queen was an active and insistent agent in the

conduct of government. Lord Palmerston as the Foreign Secretary congratulated Louis Napoleon on the success of the latter's *coup d'état* of 1851 without previously consulting the Queen. So the Queen forced him to resign the post. She rebuked Derby for neglecting to protect the prerogative of the Crown in 1858. In the same year she rebuked Palmerston for under-rating the gravity of the Indian Mutiny and forced him to send reinforcements to India. Queen Victoria and the Prince Consort prevented England from undertaking an unprofitable war with America in the famous Trent affair. In domestic affairs too she exercised a salutary influence. She made amicable settlement of controversies between the two Houses in 1867, 1868 and in 1884 and thus saved England from constitutional deadlock. The Royal Titles Act and the Public Worship Act were passed on account of her personal initiative. But the Queen failed to grasp the significance of the social and economic changes that had come upon England during her long reign. If she started her reign as a Whig, she ended it as a High Tory. She was a constant obstacle to army reform. She was dead against any proposal for restricting the powers of the House of Lords. When Lord Rosebery made such a proposal she seriously contemplated demanding a dissolution. She labelled the Liberals as 'destructive.' "Mr. Campbell-Bannerman" wrote the Queen, "forgets the danger of increasing the power of the House of Commons and having no force to resist the subversive measures of the so-called Liberals but better called destructives." In spite of her active role in the government of the country, she seldom deviated from the path of constitutionalism. She never refused a dissolution to any of her Prime Ministers, nor did she veto a bill passed by both the Houses.

But she made her influence a decisive one when there was any doubt as to who should be selected as Prime Minister. She selected Rosebery as Prime Minister in preference to Harcourt, who was considered by many to have superior claims. She took an active part in the formation of governments, and refused to accept certain persons as ministers.

Edward VII, according to Lord Esher, exercised a greater and more openly acknowledged influence than that of his mother.

He was a staunch Conservative and vehemently opposed the granting of franchise to women. He refused to create Peers to pass the Budget of 1909 even after the general election of 1910,

Part Played by  
Edward VII

which returned a majority in favour of Asquith definitely on that very question. He tried to dissuade Lord Morley from appointing an Indian as a member of the Secretary of States' Council. He often urged Lord Esher "to bring individual pressure to bear upon cabinet ministers, whose views are not in accord with his own." Knowing his views on certain subjects, ministers, often refrained from making any proposal regarding them. He was not at all a passive instrument in the hands of his ministers, though he never overstepped the limits of constitutional propriety.

"It would be a profound mistake", writes J. A. Spender, "to conclude that King George V has played no part, or only a small part, in the tremendous events of his reign." He acted as conciliator in the Home Rule conflict between the Conservatives and Liberals in 1914, but in this matter he acted in consultation with his ministers. He also exercised his influence on the side of moderation in the Government dealings with Ireland in 1921. The part he played in the formation of Governments and his relation with ministers will be discussed later.

Influence of  
George V

## VI. Abdication Crisis, December, 1936

The abdication of Edward VIII in December, 1936 raised questions of deep constitutional significance. The crisis throws a flood of light on the relation between the King and his ministers, and especially on the dependence of the King on the goodwill of the governing section of the community. Edward VIII wanted to marry Mrs. Simpson according to morganatic marriage, according to which the issues of the marriage would be excluded from succession to the throne. But the Church and the highest and most expensive circles in the society opposed the idea, apparently on the ground that Mrs. Simpson had divorced two husbands. But "it was widely believed that this provided an occasion desired on other grounds." It should be noted that Edward VIII enjoyed an immense popularity both as Prince of Wales and as King. If the richer classes, which controlled the Press in England, had wanted they could have possibly arranged for the publicity in such a way as to make the marriage a romantic occasion. If the upper circles had done so, the

Gravity of the  
problems raised



monarchy would have appeared as more democratic than ever. But Premier Baldwin, as the mouthpiece of the upper circle told the King that Mrs. Simpson would be unacceptable as Queen. "It is notable," observes Laksi, "that no authoritative voice raised the issue that the King had the right, even in so intimate a matter, to reject the advice of his ministers. The Labour Party, moreover, which insisted throughout that he had no such power of rejection was warmly praised by Conservatives for the constitutional correctness of its attitude. The gravity of the abdication crisis is universally admitted ; and if ever there was a case in which the King might have acted independently of his Cabinet, a matter of such personal intimacy as his marriage would appear to be that case. Yet the theory of an independent royal prerogative in an emergency was never raised on that occasion."

Edward VIII preferred to abdicate rather than involve the country in a grave constitutional turmoil. He had no intention of doing any harm to his country or to his people. But it was suggested by some interested quarters that he should refuse the advice of Mr. Baldwin, and that Mr. Attlee as the leader of the Opposition should declare his disagreement with the policy of the Baldwin Cabinet regarding the marriage. The King should then dismiss Baldwin, call Attlee to form a Government, then dissolve the House, and seek the mandate of the electorate regarding the marriage in a general election.

If the King had taken recourse to such a policy and the electorate had approved it, the King would have again become a vital power in the Constitution. The King, then, like George III could get back the power to dismiss a ministry which commanded the majority in the House of Commons. Ministers would have soon found the situation an intolerable one, because they could never have been sure whether a particular line of their policy would be liked by the King or not. The old opposition to the Monarchy, which had manifested itself in the famous resolutions in the reign of George III, would have been roused again, and it would have been no easy matter to maintain the Monarchy in that circumstance. Edward VIII by his wise self-abnegation saved the monarchy.



The Dominions got the right of being consulted in all proposed measures affecting the Crown by the Statute of Westminster. As there was no time for summoning the Dominion Parliaments, Mr. Baldwin consulted the Governments of the Dominions by cable and telephone. Canada endorsed the abdication by means of an Executive Order-in-Council; the Government of the Union of South Africa merely conveyed to London the assent of the Union; the Australian Parliament passed a resolution adopting the Abdication Act on the same day as the passing of the bill at Westminster.

## VII. Political functions of the King

The most important political function, which is still performed by the King in person, is the selection of the Prime Minister. There is a convention, of course, that if a party secures a majority and that party has a leader, that leader must become Prime Minister. The Labour Party always has a recognised leader elected by the Labour Members of Parliament, but the Conservative Party does not follow the practice. The King has to exercise his personal discretion (a) when no party has a majority, (b) when the Conservative Party has a majority but no leader, (c) and when there is no obvious successor to a Prime Minister who has resigned or died. The example of the first case can be traced down to 1924 when no party was able to secure a clear majority, George V had before him the choice of selecting either Mr. Asquith as leader of the Liberal Party, or Mr. Ramsay MacDonald as leader of the Labour Party. He entrusted the latter with the task of forming the Government. The second case arose on the resignation of Bonar Law in 1923. The King could select either Lord Curzon or Mr. Baldwin. Lord Curzon was disliked by many for his arrogance; and Baldwin had experience of eight months only as cabinet minister. The King preferred to make Baldwin the Prime Minister. The third case arose in 1894 when Mr. Gladstone retired from office. Queen Victoria selected Lord Rosebery as Prime Minister in preference to three other possible names. The case of 1931 is a complicated one. The country was then passing through a grave financial crisis. The Labour Party then in office, had no majority, but was the largest single party in the House. The

Labour Party had 288 members, the Conservatives 260 members, the Liberal Party 59 members and others had 8 seats. But when Mr. Ramsay Macdonald proposed a ten per cent cut in unemployment benefit, the Trade union authorities rejected the proposal, and a large section of the Cabinet, led by Mr. Henderson, revolted against the leadership of Mr. Ramsay MacDonald. There was a split in the Labour Party and Mr. Ramsay MacDonald had to resign. The King now did not consult the great bulk of the Labour Party which went over to Mr. Arthur Henderson. He consulted Mr. Baldwin (Conservative) and Sir. Herbert Samuel (Liberal) and persuaded them to serve in a Coalition Government under the headship of Mr. Ramsay MacDonald. "Mr. MacDoland", writes Laski, "was as much the personal choice of George V as Lord Bute was the personal choice of George III. He is the sole modern Prime Minister who has been unencumbered by party support in the period of office ; he provided only a name, while Mr. Baldwin supplied both the legions and the power that goes with the legions." But Dr. Jennings is of opinion that there is no evidence to show that the King acted unconstitutionally. Viscount Morrison is also of the same opinion as Jennings. He holds that the King received bad advice. George V made the mistake of not consulting the Labour Cabinet. Moreover, the proper course for the king would have been to entrust the formation of ministry to the Conservative Party.

The usual practice about dissolution is that the Prime Minister advises the King to dissolve the House of Commons, and the King accepts that advice. But twice in the present century the King took the initiative in dissolving the House, though on both the occasions he secured the unwilling assent of the Liberal Ministers to agree to do so. The first occasion arose over the passing of the Budget in 1910, when Edward VII wanted to consult the electorate ; and the second occasion arose in the same year when George V liked to have the opinion of the electorate on the question of the restriction of the power of the House of Lords. In 1913, however, George V refused to dissolve the House, though he was pressed to do so by the Unionist Members on the House Rule question. The King here followed the correct constitutional procedure, because he was not advised by the Liberal Government to dissolve the House. If he had dissolved

the House at that time, it would have meant that the King had right to dismiss the ministry on the ground that it had no mandate from the electorate on some specific issues. We have already shown that Edward VIII, too, did not like to dismiss the Baldwin Ministry which possessed the majority in the House of Commons, though the question of his own marriage was involved.

The monarch creates Peers on the advice of the Prime Minister. But if the Prime Minister asks the King to create 750 Peers in order to give him a majority in the House of Lords, the King would not agree to do so before holding a general election on that point. George V refused to create a large number of Peers in 1910 and a general election was held on the question of the power of the House of Lords. The monarch, alone decides on the award of honours like the Order of Merit, Most Noble Order of the Garter, the Thistle and the Royal Victorian Order, the Order of the Companions of Honour.

The convention has been firmly established that the King should, as a normal rule, accept the advice of his ministers.

Lord Esher informed George V that "If the constitutional doctrine of ministerial responsibility means anything at all, the King would have to sign his own death-warrant, if it was presented to him for signature by a minister commanding a majority in Parliament. If there is any tampering with this fundamental principle the end of the monarchy is in sight." It has already been shown that Edward VIII preferred to abdicate the throne rather than disregard the advice of Mr. Baldwin. But at the same time it should be noted that ministers usually give the greatest possible consideration to the advice of the King, though they are not bound to accept that advice.

The 'dignified' functions of the king as the symbol of the unity of the nation and the empire are far more important than his political functions. The important role which the monarch still plays in the Commonwealth of Nations has already been discussed. There can be no doubt that with millions of people in the United Kingdom and the British Empire the monarch is still the focus of unity and the link between the divergent interests of the widely separated countries.

## CHAPTER XV

### THE PARTY SYSTEM

#### I. Polity of Parties

The British system of government has been appropriately designated by Dr. Jennings as the Polity of Parties. Though the party system is not directly recognised by law, yet party is an integral part of the fabric of the English Government. The main function of a Party is to get a Government of its own leaders into office, and to try to keep it there as long as possible. To secure this object the active members of the Party come in touch with the electorate and try to discover what they want. The Party formulates a programme embodying as much of the popular demand as it appears attractive to it and at the same time consistent with some of its basic principles. The Party canvasses support for its programme by arranging parties, dances and fairs, by organizing meetings, holding educational classes, distributing pamphlets and above all by conducting newspapers. An individual is a mere drop in the vast ocean of the electorate, and if he wants to get his political or economic objective attained, he must relate himself to a party. The personality of the leaders contributes, much to the victory of a party. The leaders cannot gain power or retain it unless they have an organized following. It is thus seen that the individuals seeking a common objective require leaders while leaders require the support of followers who are closely organized in a Party. The Party System makes Government more consonant with public opinion. The leader must try to carry his following with him. He cannot always dictate. Peel and Wellington were able to induce the Tory Party to support the Emancipation of the Catholics ; but when Peel repealed the Corn Laws in 1846, the Conservative Party split up. Similarly, in 1886 Gladstone failed to carry all his followers with him in his proposal to grant Home Rule to Ireland. Again in 1931 the majority of the Labour Party revolted against Ramsay MacDonald, when he proposed a ten per cent cut in unemployment benefits. The only alternative to Party System is Dictatorship, under which no Party excepting the Dictator's own is recognised.

Dictators control, or try to control all the organs of public opinion, whereas in England these are free.

The political parties in England are founded on factors which are mainly matters of opinion. Opinions do change, and with the change of opinions, there is the 'swing of the pendulum', and the substitution of minority for the majority. Such a change cannot take place in a country where Parties are based on religion, provincial feeling, ancestry even on economic interests. The divergent economic interests are proving now-a-days much more important than before, because of the enfranchisement of the working classes. But it is not true to say that the Labour Party is made up entirely of workers, and the Conservative Party of capitalists alone.

The Labour Party believes that it will be able to attain social democracy and to secure equality of income for all by means of the Party System. The introduction of universal suffrage has made it possible for the nation to prevail over the privileged governing class within it. The governing class can maintain its position only by appealing for popular support. That support may be secured by the working classes, organised as a strong party. The future political conflict, therefore, will be one between a party of resistance and a party of progressive movement.

One of the characteristic features of the English Government is the legal recognition of His Majesty's Opposition. The Act of 1937 which fixed the scale of salary of ministers, granted a salary of £2000 a year to the leader of the Opposition. It may seem absurd to grant a salary to a person who is trying his best to reveal the inefficiency of the Government, and to make the Prime Minister discredited with a view to taking his place. But nothing better illustrates the spirit of tolerance in the British public life than this method of maintaining an official Opposition. A Dictator thinks that those who oppose him are traitors, while a true democrat suspects that what he himself believes to be true may not be really true. The Opposition also provides an alternative government at hand, should the Party in power fail to retain its popularity.

## II. History of the Party system till 1939

The origin of division of members of Parliament into two parties may be traced to the reign of Elizabeth when the Puritans formed the earliest English party.

Origin of the parties      Those who opposed the Puritans and emphasised the unity of English Protestantism in

the Church of England may be said to have been the fore-runners of the Tory Party, which later on became the "Church Party". On the eve of the Civil War the Puritans became generally Parliamentary, Republican or Roundhead Party, and the Churchmen became the Prerogative, Royalist or Cavalier Party. The division of politicians into two parties became more pronounced in the reign of Charles II. Danby formed a Court Party from the old Cavaliers based on devotion to the Crown and to the Church of England. In opposition to the Court Party was organized the Country party by the Earl Shaftesbury on the basis of the old Roundhead opposition to any extension of the royal power and fear and hatred of Roman Catholicism. Shaftesbury was the first organizer of popular opinion outside the House. His aim was to exclude James, the Duke of York from succession to the throne on the ground that he was a Roman Catholic. He brought forward an Exclusion Bill to gain his object, but Charles II dissolved Parliament in 1681 to prevent it from being passed. It was during the debate over the Exclusion Bill that the Country Party (now called Petitioners, because they petitioned the King to call a Parliament) came to be called by its rival party as the Whigs, which originally meant rebel Scottish Presbyterians. The Country Party labelled the Court Party (now called Abhorers or the Tories), which meant rebel Irish Papists. These two names—the Whig and the Tory stuck to the respective Parties till 1835.

The Glorious Revolution, put in the words of Ilbert, 'the executive authority of the King in commission.' and it was

Party System and Cabinet Government      ranged that the Commissioners should be members of the legislative body to whom they are responsible. The ministers could keep their control over Parliament only on

two conditions. First, they must have the same political views or belong to the same party ; and secondly, there must be the discipline of the party over the majority which supports the ministry. The cabinet system presupposes the party system,



because without a stable backing, ministries would rise and fall rapidly, and because there would be no alternative organization to assume power and responsibility on the fall of one ministry. These facts were realized, though hazily, in the reigns of William III and Queen Anne. But as we understand party system to-day, it did not exist in the seventeenth century. Only spadework had been done. The country was grouped in two divisions—"Court" and "Country". There was neither an opposition party ready to form government, nor fundamental differences between the parties on foreign, economic or social issues. Bolingbroke characterised the Tory Party as "the bulk of the landed interest". He viewed the Whigs in 1717 as "the remains of a party formed against the ill designs of the Court under King Charles II, nursed up into strength and applied to contrary uses by King William III, and yet still so weak as to lean for support on the Presbyterians and the other sectaries, on the Bank and the other corporations, on the Dutch and the other Allies". The Revolution Settlement was as much the work of the Whigs as that of the Tories. At best, Whiggism stood for something new and sectional and Toryism for established traditions at the end of the seventeenth century.

The Whigs scored a victory over the Tories in the accession of the Hanoverians to the throne of England. They were able to secure the establishment of supremacy of Parliament for which they had been fighting. On the other hand, the Tories believed in the right of James II and his successors to rule England, though they did not like the Catholic religion adopted by these princes. The Tory leader, Bolingbroke came to power a few days before the death of Anne and he is said to have plotted for the restoration of the Stuarts. The Queen died suddenly and the Whigs proclaimed George of Hanover as King according to the terms of the Act of Settlement. On the arrival of George from Hanover, the leading Tories were impeached for treason and Bolingbroke fled to France. Thus the Tories became discredited and leaderless, George I and his son were grateful to the Whigs. Moreover, they were unwilling and unable to take much interest in English politics. They, therefore, allowed the Whigs to rule in their name. This meant that the vast patronage of the Crown—the posts in the Civil Service, the Army and Navy and in the Church as well as honours—fell to the hands of the

The rule of the  
Whigs 1714-  
1760

Whigs. The Whigs had a majority in the House of Lords. They maintained their majority in the House of Commons through a skilful distribution of offices and honours to those who supported the Whig Government. It has been estimated that about one fourth of the members of the Commons held minor posts on condition of continuing to vote for the Government. Another source of power of the Whigs lay in their hold over the rotten and nomination boroughs. In the eighteenth century the line of division between the Whigs and the Tories was rather thin. Members of both the parties belonged to the wealthy land-owning families and both strove to exploit Government for their own ends. The change of allegiance from one party to another was easy and common. George III tried to break the monopoly of political power, exercised by the Whigs. The failure of the second Jacobite Revolt in 1745 made the Tories finally reconciled to the Hanoverian rule. They transferred their loyalty to George III, who was an avowed enemy of the Whigs. The long rule of the Whigs had given rise to factions in their own rank. The King rallied the Placemen round his own banner and formed a political party which received the name

The King's  
Friends of the King's Friends. The King's Friends, however, could not make their political influence decisive. The King had to appoint one Whig Minister after another till he found in 1770, Lord North, a Tory, and a staunch supporter of the royal power.

Lord North slavishly followed the lead of the King, and the twelve years of his ministry may be termed as the period of personal rule of the King. The first great Tory Ministry of the eighteenth century was that of Younger Pitt,\* who formed the

The Tory supremacy (1784-1830) Tory ministry in 1784 and remained continuously in power for seventeen years. The basis of the modern party division, writes Dr. Jennings, was produced by the French Revolution. The Conservative Whigs under the Duke of Portland joined Pitt "to maintain the constitution, and save the country. Burke, who led the way, became the philosopher of

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\* Modern scholars like Prof. Hagwood believe that Pitt the Younger contributed nothing to Tory party as an institution. "Pitt's ministry was a personal *tour de force* perhaps unmatched in British history, but to party and to strict party allegiance. it owed little, and to the history of parties it contributed almost nothing" (the British Party system.)

conservatism ; and Charles James Fox and Charles Grey led, or failed to lead, the remnant of the Whigs in the defence of liberalism against the long conservative reaction." In this period Toryism accepted repression of liberal democratic movements at home and furtherance of imperialism abroad as its principle. The Industrial Revolution, which gave rise to capitalist employers and wage-earning factory-workers, fostered grave discontent against the small class of landholders who utilised political power for keeping up rents. The Tories were deadly against the reform of Parliament, but the economic forces were too strong to be resisted even by their well-organised party.

The First Reform Act (1832) admitted the business interests into the charmed circle of power. The traders and manufacturers wanted freedom from interference of the State. They advocated the principle of *laissez-faire* ('let alone') and joined the Whigs, who soon afterwards came to be known as Liberals. Peel re-christened the Tory Party as the Conservative Party in his manifesto to the electors of Tamworth in 1835. He persuaded his followers to give up their opposition to the reform of Parliament, which was now an accomplished fact. The Conservatives came to be advocates of the power of the Crown, the Established Church, the House of Lords and of British Imperialism. The Tory Party, thus reorganised, was able to capture power in 1841, but it spilt up into two sections—the Peelities (Free Traders) and the Protectionist—when Peel repealed the Corn Laws in 1846. The next twenty years (1846-1866) became a period of political disintegration, "during which men crossed freely from one party to another and voting in Parliament frequently followed no clear party lines at all." Palmerston, the outstanding personality of this age, was a Liberal but he did not allow Parliament to be reformed so long as he lived.

The acceptance of office by Gladstone, the leading Peelite, under Palmerston, the Liberal leader, in 1859 was a prelude to the final absorption of Free Traders into the Liberal Party. Gladstone became the leader of the Liberal Party after the death of Palmerston (1865). The Liberal Party now advocated individualism, and removal of all restrictions from the path of free competition in every sphere

The Conserva-  
tives and  
Liberals  
(1832-1869)

Re-organi  
sation of Parties  
by Gladstone  
and Disraeli

of life and disliked an adventurous, foreign policy. Its motto was "peace, retrenchment and reform". The Conservative Party was reorganised by Benjamin Disraeli, who rallied the protectionist rump of the old Tory party and advocated a policy of paternalism towards the labouring classes and followed a spirited foreign policy. Disraeli in his famous Crystal Palace speech laid the foundation of a new imperialism which emphasised the necessity of having closer relations between Great Britain and her colonies. The period between 1869 and 1884 witnessed a grand duel between the two respective parties.

After the death of Disraeli, Lord Randolph Churchill raised the standard of revolt against Lord Salisbury who led the Tory party between 1881 and 1902. He wanted the Conservative Party to pay greater attention to the industrial and agricultural worker who were enfranchised by the Acts of 1867 and 1884. He held that, "If the Tory Party is to continue to exist as a power in the state it must become a popular party. . . . . The party chiefs live in an atmosphere in which a sense of the importance of their class interests and privileges is exaggerated, and to which the opinions of the common people can scarcely penetrate. . . They half fear and half despise the common people." But he could secure only a few adherents to his views ; the rank and file continued to follow the recognised leader of the party. The Conservative Party, instead of being weakened gained new strength on account of the defection in rank of their rival party.

The Irish members of Parliament organised themselves in the Home Party in 1872. The Party became a source of trouble to the English politicians when Parnell assumed its leadership. In the first general election of 1886, the Liberal Party gained 86 seats over the Conservatives, but the followers of Parnell numbered exactly 86. This meant that Parnell held the balance between the two English Parties. Gladstone secured the support of Parnell by proposing the first Home Rule Bill. But this caused a split in the Liberal Party. The Home Rule Bill was disliked by the aristocratic Whigs like Lord Hartington, by the old Radicals like John Bright and the new Radicals headed by Joseph Chamberlain. As many as ninety-three Liberals voted against the Bill. Gladstone dissolved the House and appealed to the country. The result of the election

went against him, because those Liberals who were against Irish Home Rule formed themselves into a Liberal Unionist Party, and went over to the Tories. With the departure of the aristocratic element, the Liberal Party became essentially a radical party.

The Liberals entered Parliament as the majority party in 1906. They remained so till the outbreak of the war under the leadership of Campbell-Bannerman and after 1908 Asquith.

But when World War I broke out all the parties decided to shelve controversial matters. Consequently coalition government was formed in 1915 with Asquith as the Liberal Prime Minister and an approximately equal number of Conservative and Liberal ministers. The formation of this coalition led to the beginning of disruption of the Liberal Party. David Lloyd George drove out the old Gladstonians with the support of Conservatives and became the Prime Minister at the end of 1916. The subsequent political career of Lloyd George is the history of the debacle of the Liberals. In the election of 1918 Lloyd George canvassed for the victory of the coalition and gained 478 seats out of a total of 707 against 28 seats captured by the independent Liberals under the leadership of Asquith. The coalition did not last long. The Conservatives stood apart and formed Governments after the general elections between 1922 and 1924. The compromise made by Lloyd George with Asquith rehabilitated but did not put the Liberal Party in power. In the election of 1923 they gained 158 seats but only 42 seats in the Parliament after the election in 1925. The Liberal party's final decline and dismemberment began from 1931 when they won 72 seats. The debacle of the Liberal Party brought in the rise of the Conservative Party which was resuscitated by Bonar Law and Stanley Baldwin between 1916 and 1922.

By the year 1890 all the principles of modern party system had been established. The beginnings of the party headquarters can be seen in the two political clubs, the Carlton Club for the Conservatives and the Reform Club for the Liberals founded respectively in 1832 and 1836. The earliest step towards party annual conferences was taken by the formation of the National Union of Conservative and Constitutional Associations at the Freemason's Tavern, London on the 12th November, 1867 and the National Liberal confederation in 1877. The election manifestoes



of the party leaders also begin from the Tamworth Manifesto issued by Sir Robert Peel in 1834.

The origin of the Labour Party can be traced to the growing conviction of the Trade Unions that the two other parties have failed to concern themselves in any genuine way with the interests of the working classes. Rise of the Labour Party James Keir Hardie raised the question of the formation of an independent party before the Trades Union Congress in 1887. He was elected to Parliament as an Independent Labour candidate from West Ham in 1892. The Independent Labour Party was committed to British Socialism as represented by the Marxist Social Democratic Federation (estd. 1883) whose leaders were influenced also by the Fabian Society (established in 1883-84). Till 1900 many Trade Unions were actively hostile to socialism. However, some Trade Unions agreed to join the Labour Representation Committee which was set up in 1900. This new Committee was not composed of individual members but of Labour and Socialist organization who paid an affiliation fee. In 1900, 92% of the members were represented by trade unions with a membership of 353,000 and the rest 8% by 23,000 Fabians and members of the Independent Labour Party and the Democratic Federation. The Labour Party itself was formed as a result of a resolution passed in the fourth annual conference of the Labour Representation Committee in 1903. The Independent Labour Party continued to remain as an independent group within the federal structure of the Labour Party with 54 seats. However, the entry of the Labour Party, in the Parliament after the General election of 1906 was really a tremendous victory. The Liberals supported the Labour Party at the Elections and continued doing so till 1910. In spite of the handicaps due to the verdict in the Osborne Judgment in 1909 which declared the political action by Trade Unions to be unlawful, the Labour Party won 40 and 42 seats after the two elections held in 1910. The party's prestige increased so much that Arthur Henderson became a member of the War Cabinet of 1916 and John Hodge and George Barnes became ministers. The passing of a new Trade Union Act, 1913 legalising political expenditure by Trade Unions, the expulsion of Henderson in 1917 from the War Cabinet due to his advocacy of the Stockholm Peace Conference and the eclipse of the Liberal Party after 1918 led to the complete reorganization of the Labour Party, and its final break with the Liberal Party.



Henderson succeeded in rewriting the constitution of the Labour Party in February, 1918. Now, besides trade unions, individual members could become members of the Labour Party. A local party was set up in every constituency. With this new machinery, the Labour Party captured parliamentary seats in increasing numbers in successive elections after 1918.

Year of General Election	Total No. of seats	Seats won by Labour Party
1918	707	Coalition Labour 13 + Labour 59
1922	573	142
1923	607	191
1924	615	151
1929	615	289
1931	615	52 + 13 National Labour
1935	615	154 + 8 National Labour

When Baldwin became Prime Minister on the death of Bonar Law, a new election took place. As a result of the election in 1923, the Conservatives gained 258 seats, Liberals 158 and the Labour Party 191 seats respectively. But as the Conservative Party decided to introduce protection, Asquith as leader of the Liberal Party fatefully decided to side with the Labour Party.

With the support of the Liberals, the Labour Party formed the first Labour Government in 1924. But the Liberals were badly treated by Mr. Ramsay MacDonald. The Liberals turned against Labour, due to its relation with Russia and publication of the Zinoviev Red Letter in 1924 which was supposed to be a letter

written by Mr. Zinoviev of the Third International to the Communist Party of Great Britain to engage in serious revolutionary activity. Mr. MacDonald indeed protested against that letter, but did not give any clear direction to the Foreign Office as to the publication of the letter and its note of protest by the Foreign Secretary. Moreover, as the Labour Party was not in a majority, it could neither solve the housing and unemployment problems nor could it impose a Capital levy. Mr. Ramsay MacDonald had to dissolve Parliament only after nine months. The General Election which took place in 1924 gave the Conservatives 412 seats and to Labour 151 seats. The Conservatives formed the Cabinet and treated Labour rather unsympathetically. The Labour Party had serious problems to face in 1926 when the General Strike occurred and for the first time the trade union section of the Labour Party defeated at the Party Conference the Independent Labour Party's proposal for a national system of family allowances. The proposal was characterised by R. MacDonald as full of "flashy futilities". In spite of these troubles some days, the Labour Party came out victorious as the majority party in the election of 1929. The reasons were that the British people did not like the reorganisation of local government, rating system and the maxim of "Safety First" by protection of industries and the failure of

—second  
Labour  
Government  
(1929)

the Conservative government to deal with unemployment between 1924 and 1929. The Labour Party formed their second government in 1929 by capturing 287 seats as against 260 Conservatives and 59 by Liberals in the election. But unfortunately the MacDonald Cabinet failed to carry the Education Bill which aimed at raising the school going age to fifteen and paying parents five shilling a week for enforced absence of children from work and legalisation of the General Strike. Moreover the Labour Party was divided over the fiscal policy to meet the impact of the world economic crisis and the attempt of nations to dump their surplus production in Britain. The immediate cause of the resignations of Mr. Macdonald from the post of Prime Minister was his inability to get the consent of all the members of the Cabinet on the proposal of a cut of 10 per cent in unemployment benefit. Macdonald saw King George V for advice on 23rd August, 1931. On the advice of Sir Herbert Samuel, the king decided that a National Government should be formed in co-operation

with principal parties. MacDonald without consultation of the Labour Cabinet agreed to be the head of National Government and thus he betrayed the Labour Party. Viscount Snowden tells us that Mr. MacDonald did not consult his Labour colleagues because he knew that his action would not be approved of by the Party. Consequently, with the formation of National Government in 1931 Arthur Henderson along with other 241 members of the Labour Party (excepting 15) refused to recognise the leadership of Mr. MacDonald. The latter could get the support of three of his former Labour colleagues for different reasons in his newly formed Cabinet. Snowden's services were necessary for his astuteness as financier. J. H. Thomas was sick of his Party, and Sankey was just an 'honorary member' having no deep socialist convictions.

The consequences of the disruption of the Labour Party in 1931 were seen in the overwhelming success of the National Government in the election in the same year which returned 470 Conservatives, 33 Liberals, 35 National Liberals, 13 National Labour and 8 Independents, 52 Labour and 4 Lloyd George family group. Thus in a House of

Effects of  
National Govt.  
on Labour  
Party

615 members Labour represented only 52 seats as against 556 by Nationalists. Events moved rapidly and there were further disruptions in the Labour Party. The Independent Labour Party was disaffiliated at a special conference in July 1932. The followers of Mr. Macdonald (after 1931) were known as National Labourites. Sir Stafford Cripps advocated a left wing policy. Even in the selection of 1935 the Labour Party failed to close their differences. The 154 members of Labour Party who formed the Opposition did not combine with 17 Liberals and 4 Independent Liberals to oppose the Nationalist Coalition between 1935 and 1939. The Second World War fortunately cemented the cracks in the Labour Party. All excepting the Independent Labour Party, joined in the struggle against Fascism. C. R. Attlee as the leader

—unity in  
Labour Party

of the opposition was invited by Winston Churchill to join the reconstituted National Government in 1940. A truce between the various parties occurred during and after Dunkirk in 1940, when the Labour Party supported the Conservative leader Winston Churchill.

### III. Character and policy of the British Parties after the Second World War

We have already seen that sharpness of distinction in party division was blurred considerably during 1931 and 1939 on account of economic crisis. The absence of party strife continued during the Second World War. The National Government which remained in office during this period was conducted by the Conservatives with the general support of the Labour and Liberal parties.

A complete change-over of the party positions took place after the Second World War. The number of parties which succeeded in parliamentary elections considerably declined. There were eleven organised parties or 33 groups\* which participated in the general election of 1950. Amongst these, as compared to 1945, the following parties could not capture any seat : National Labour, Communist, and Independents. In the election of 1951, Communist, Independent Labour, Scottish and Welsh Nationalists parties failed to return any successful candidate to the Parliament. The table page 364 would illustrate the composition of the House of Commons in 1950, 1951 and 1955.

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\*There were really as many as 33 different groups :—

- (1) 10 groups among conservatives—Conservative, Unionist, Conservative and Unionist, Ulster Unionist ; Independent Conservative, National Liberal, Conservative and Liberal, Conservative and National Liberal, National Liberal and Conservative, Liberal and Conservative.
- (2) 2 groups—Liberal and Independent Liberal.
- (3) 3 „ —Labour, Cooperative and Labour, N. Ireland Labour.
- (4) 5 „ —Independent Labour, Labour Independent, Independent Socialists, Socialists, Irish Labour.
- (5) 1 „ —Communist.
- (6) 1 „ —Social Credit.
- (7) 9 „ —Scottish Nationalist, Scottish Home Rule, Scottish Self-govt., Welsh Republican, Welsh Nationalist, Independent Welsh Nationalist, Irish Nationalist, Sinn Fein and Irish Anti-Partition.
- (8) 1 „ —Christian Democrat.
- (9) 1 „ —Independent.

	1950 before Election	1951	1955
Conservatives and Supporters	216	320	346
Labour	391	295	277
Liberal	10	6	6
Irish Nationalists and Irish Labour	2	3 including Irish Re- publican and Anti-Parti- tion Ireland	
The Speaker	1	1	1
Communist	2	Nil	Nil
National	2	Nil	Nil
Independents	16	Nil	Nil
Total	640	625	630

We can draw several conclusions from this table. The decline of the Liberal Party is evident. At the general election of 1945, the Liberal Party set up 306 candidates but only 12 were elected. In 1950 and 1951 they set up 475 and 109 candidates. But only 9 and 6 candidates were elected in 1950 and 1951 respectively. The causes of the collapse of the Liberal Party may be that the main programmes of the party like socialism and political freedom are now advocated by Conservatives and Labour parties. Middle class people now vote for Conservatives. Secondly, the Communist Party has very few followers in Great Britain. In 1945 the party set up 21 candidates but only 2 were elected. In 1950 and 1951 they set up 100 and 10 candidates respectively, none of whom succeeded. The Labour Party does not tolerate the crypto-Communists in its rank. Thirdly, the Independent Labour Party failed in all elections since 1950. Fourthly, not a single Independent has been elected either in 1950, 1951 or 1955. It seems that England has returned to

the two-party system. As there is no room for the third party, the voters vote either for Labour or Conservative Party.

There are differences in age, education, and occupation, amongst the supporters or members of the three parties, Conservatives, Labour and Liberal. There are almost marked geographical spheres in which each of these parties is stronger than the others.

The Conservatives have greater number of adherents amongst the female section of voters and those people who belong to the age group 50 to 64. Mr. J. F. S. Ross calculated that every six out of seven Conservative members of Parliament were educated at public schools, and more than half were educated at Oxford or Cambridge. The election results between 1945 and 1951 show that lawyers, manufacturers and bankers, former civil servants, Company directors, landowners and farmers were Conservative M.Ps. The Conservatives are largely supported by business and farming elements including farm labourers and a majority of the professional classes. Usually they get majority of supporters in counties of southern and central England, and less industrialised districts of northern England and Scotland.

The Labour Party is supported to a greater extent by those who belong to the age group 21-29 and those who belong to heavy industries, trade unions, lower middle class or working class. Coming to educational standards, according to Ross "In the 1950 House of Commons rather more than half the Labour members had only an elementary school education, while of the remainder rather more than half other types of selective secondary school. About 4 out of every eleven Labour M.Ps. had had some kind of university education, but only one in six had been to Oxford or Cambridge". Geographically the Labour Party polls more vote in the areas between South Wales and Tyneside, London and its suburban areas and the mining-manufacturing districts in England and Scotland.

The Liberal Party has sympathisers amongst all classes and age group of people, and specially amongst the nonconformist religious groups. There is a greater concentration of voters for this party in Wales and Scotland.

Dr. Jennings has estimated that about 21 million voters are not firmly attached to any party, and the party which can



win over the majority of them becomes victorious. The white-collar workers including members of craft unions, Bank clerks and Railway clerks form doubtful voters, and these really determine the results of elections. "Both parties" writes Dr. Jennings, "are trying to catch about 7,50,000 votes to be cast by the more prosperous workers (as in the Mainlands) and the clerks and other white-collar workers in places like Hammer-smith and Fulham".

Both Conservative and Liberal parties agree in supporting the United Nations Organisation, extending cooperation to the United States of America and Western Europe, development of colonial territories. In domestic policy, the Labour Party declared "full employment" to be a government responsibility in 1945, and in 1950 the Conservative Party adopting the same policy, stated in its election manifesto "we regard the maintenance of full employment as the first aim of a Conservative government." Both the parties believe in ensuring social security, improving the Health Service, implementing the principles of the Education Act 1944, and the pressing forward of the housing programme.

But there are certain fundamental differences between them on nationalisation, planning and controls. The Labour party argues for greater nationalization and narrowing the differences in unearned income. The Labour Government nationalised the Bank of England, coal mines and other fuel and power industries, inland transport and iron and steel industry. It asserted that "private enterprise must be set free from the stronghold of restrictive monopolies". The Conservative Party believes on the other hand in laissez faire economy. The election manifesto of 1950 asserted that "a true property-owning democracy must be based upon the wide distribution of private property, not upon its absorption of the State machine." The Conservative Party has modified its views on nationalization. The Conservative Government denationalized iron and steel industry. The Iron and Steel Act, 1949 a project of the Labour Government was repealed by the Conservative Government by Iron and Steel Act, 1953. This latter act established an Iron and Steel Holding and Realization Agency with the duty of returning the companies to private ownership. Similar attitude was taken with regard to inland transport. The Labour

Government, by the Transport Act, 1947 established public ownership over railways, docks, hotel and road transport interest. London's transport system under the Control of the British Transport Commission. But the Conservatives coming to power, decentralized the railway administration and allowed it greater freedom to adopt normal commercial practice of charging for haulage, by passing the Transport Act, 1953 and 1956. The Act took away the Commission's power to coordinate road and rail passenger services. The Transport (Disposal of Road Haulage Property) Act 1956 returned to private ownership the bulk of road haulage. But the Conservatives have not changed the main principles of nationalization of air corporations (Air Corporations Acts 1949 to 1956), cable and wireless service (nationalised on 1st Jan. 1947), coal industry (Coal Industry Nationalisation Act, 1946 and 1949), electricity (Electricity Acts, 1947, 1957) and gas supplies (Gas Act, 1948), all of which were the work of the Labour Government between 1945 and 1950.

#### IV. Electoral Reforms after the Second World War

The number of seats in the House of Commons was reduced from 640 to 625 in 1948-49 by abolishing the 12 university seats and also dropping the business premises vote. The existence of these two kinds of constituencies had endowed the university graduates and wealthy traders in the city of London and a few other large cities with plural voting. Now every voter has got only one vote. This is a triumph of abstract democratic principles, but the loss of special representation of universities, which used to elect distinguished scholars, cannot but be regretted.

The redistribution of constituencies effected by the Acts of 1948 and 1949 has given a seat to an average of 52,575 voters in the rural areas or county constituencies as compared to borough constituencies of 56,529 voters. As supporters of the Labour Party usually reside in urban areas, the Conservatives have gained an advantage over the Labour Party in electoral contests.

The Act of 1949 has prescribed £ 450 plus 2 pence for each registered elector in a county constituency and 1½ pence for

each in a borough constituency, as the maximum permissible limit. The election expenses, thus, should not exceed £ 888 for a candidate. The Conservative Party usually spend up to this limit on all but the most hopeless seats, but the Labour Party generally spends less in all but the most highly contested seats. The Act of 1949 has restricted the number of cars, even if allowed to be used by friends free of charge, that can be used to transport electors to the polling station. One car for every 1,500 electors in county constituencies and for every 2,500 voters in borough constituencies may be used. This provision was designed to neutralize the advantage of the wealthy Conservative candidates or their friends.

Candidates selected by the Conservative Party were expected to meet their own election expenses. This shut out the poorer people from standing for election and substantiated the charge that the seats in Parliament were considered by the party as preserves for the wealthy only. In 1951 election, therefore, the Conservatives collected voluntary contributions from their supporters and insisted that each constituency must meet in full their own election campaign expenses. They learnt the value of such contributions from the Labour Party, which collects even a penny per week from each family, so that at the time of election everyone of the contributing members of the party may exert himself or herself to see that the party's candidates win the election and thus bring a return for the investment that has been made. The election expenses of the candidates of Labour Party are usually defrayed from party funds.

## V. Structure and Organisation of Parties

In 1951 the total electorate of the United Kingdom consisted of 34,600,000 voters. Besides these there were 4,00,500 postal votes giving an average of 740 per constituency. The average number of votes cast for a Labour and a Conservative M.P. was 42,100 but for a Liberal it was 2,91,600. In 1950, 83·8 per cent of the registered voters and in 1951, 82·6 per cent exercised the franchise.

Each party has a Parliamentary Party Organisation, consisting of the members of Parliament belonging to the Party.

Organisation of Parties in Parliament      The Liberal and the Conservative Parliamentary parties are free to determine their course of policy and action without reference to outside members of the party ; but the Labour Parliamentary Party has to keep itself in touch with the National Party Executive. Each party elects its own leader and the Whips. The main business of the Whips is to rally the members of the party at the time of voting in the House of Commons and to interpret the views and sentiments of the Back benchers of the party to the leaders. The unit of Conservative, Labour and Liberal parties in the United Kingdom is normally parliamentary constituency. An organisation of the Liberal and Conservative parties in a constituency is called an 'association'. The constituency organisation of the Labour Party is known as constituency Labour Party. The Communist Party's units are not autonomous, but act according to the directions of headquarters.

In every constituency each party has a local organization. The first local organization to be set up was the 'Birmingham Caucus' founded in 1867 by Joseph Chamberlain, who was then a Liberal. The 'Caucus' had such a remarkable success to its credit that the Liberal and the Conservative parties set up similar organization in every centre. The Conservative Party established a federation of the local Conservative Associations now known as the National Union of Conservative and Unionist Associations in 1867. The purposes of the National Union of Conservative and Unionist Associations are to promote the formation of Conservative and Unionist associations in every constituency and to maintain close relationship with the Conservative and Unionist Central Office. These functions are carried through the twelve provincial area councils and through a central executive committee, a central Council and a conference. The twelve area councils also link the constituency and headquarters. The Executive Committee of the National Union which is constituted annually includes among its members the leader of the Conservative Party, chairman of each advisory committee, five representatives appointed by each provincial area, one representative of the peers, etc. The other organ of the National Union is the central council, which

considers the report of the Executive Committee of the National Union and listens to the other motions submitted by the lower units of the party. The basic and apex units of the Party are the Constituency Association and the Central Office respectively. The Central Office created first by Disraeli in 1870, interviews the candidates for parliamentary elections, advises local groups on organizational problems and party tactics, and sends an area agent to each of the twelve areas. The election agents of both the Central office and local party constituencies, getting a salary between £ 400 and £ 800 a year are trained by the Central office. The Chairman, Vice-chairman and Treasurers are appointed by the leader of Conservative Party. The leader is in no way bound by the decisions of the Conservative conference. The National Union convenes the above-mentioned conference once a year, which is attended by all members of the Central Council and 7 representatives of each constituency association.

The delegates of Trade Unions, the Socialist and Professional Societies, the Co-operative Societies, and the Local Party Organizations and the Labour members of both the houses of Parliament meet once every year at the Annual Party Conference. Each of the member organizations is represented in proportion to the size of its membership, holding one voting card for every thousand members or fraction thereof. Generally five or six of the big Trade Unions control more votes than all the constituency parties put together. The conference meets for five days a year and determines the policy of the party.

Sir Winston Churchill in a letter to the then Mr. Attlee pointed out the constitutional significance of the programme adopted by the annual conference on the 3rd July 1945, thus : "It is clear that the conference, working through its executive committee, is the controlling body, so far as the work and policy of the Labour Party is concerned, whether in office or not". Ivor Bulmer Thomas holds the same view. But Mr. Attlee and Herbert Morrison denied the allegation. The former replied to Churchill in these words : "Neither by decision of the annual party conference nor by any provision in the party constitution is the Parliamentary Labour Party answerable to, or under the direction of, the National Executive Committee. Within the programme adopted by the annual party conference, the Parliamentary Labour Party has complete discretion in its

conduct of Parliamentary business and in the attitude it should adopt to legislation tabled by other parties."

When the conference is not sitting the management of the affairs of the Labour Party and the direction of its Central Office are in the hands of the National Executive Committee which consists of 27 members who are elected at the annual conference. Of these, 12 are chosen by the Trade Union Delegates, 7 by the Local Party Organizations, 1 by the Socialist, Professional and Co-operatives, and 5 women elected by the whole conference. In addition, the leader of the Labour Party in Parliament and treasurer are *ex-officio* members. The National Executive Committee meets once a month for two or three days. It has large powers and larger influence even on the conference. Its greatest power lies in the fact that no one is accepted as a Labour Candidate for the House of Commons, unless he or she is approved by it. The Executive has also got the authority to expel members.

Besides the Executive Committee, there is the National Council of Labour consisting of 21 members of whom 7 are elected by the Trade Union Congress, 3 by the Labour Party Executive, 4 by the Parliamentary Labour Party and 7 by the Co-operative Union. The National Council is an advisory body. Its main function is to arrive at an understanding between the different organizations of the party.

The Labour Party also has got constituency party organizations, consisting of ward meetings, which may be attended by all the members who pay at least the minimum subscription of one shilling a year. The ward has a secretary, a chairman and collectors. It has the right to send delegates to the constituency party which in turn elects an executive. Any local Trade Union branch or society which is affiliated, can also send delegates to the general committee in proportion to its membership. The general committee discusses policy and controls the affairs of the constituency party.

The organization of the Labour Party is much more democratic than that of the Conservative Party.



## CHAPTER XVI

### THE JUDICIARY AND LIBERTY OF SUBJECTS

#### I. History of the Judicial system in England

In the Anglo-Saxon period justice was mainly administered by the local Courts of the Shire and Hundred. In the Norman period the centralising authority of the King on the one hand, and the more immediate authority of the feudal barons on the other, limited the jurisdiction of local Courts. But the Norman Kings maintained the Shire Court as a counterpoise of baronial Courts. In the time of Henry I the Barons of the Exchequer were sent to Shires to collect revenue and administer justice. By the time of Edward I, the Curia Regis was divided into three Courts :—(1) The King's Bench, which had jurisdiction over all criminal cases and all pleas of the Crown, (2) The Court of Common Pleas which decided all cases between subjects and subjects, (3) and the Court of Exchequer which decided all cases involving revenue. But still the King-in-Council retained the right to correct the errors of the judges by equity. The Court of the Chancellor and the supreme appellate jurisdiction of the House of Lords are derived from the authority of the King. When in the 15th century, the Common Law Courts revealed weakness, the Court of Star Chamber was organised by Henry VII. In the 16th century the executive was able to control the administration of justice by means of "Prerogative Courts" such as those of the Star Chamber, the Courts of the Marches, the Council of the North. The Stuart Kings tried to subordinate the judiciary to the executive. Parliament resisted this policy and by the Long Parliament all these courts were abolished. The Habeas Corpus Act of 1679 further guaranteed the rights of the subjects.

The Act of Settlement, 1701 gave to the judiciary the real independence of the executive by making the judges irremovable except by an address to both Houses of Parliament. Judicial independence is further secured by grant of substantial salaries, hardly any promotion, trials in open courts and immunity of judges from legal attacks. The salaries enjoyed by the Lord

Chancellor, Lord Chief Justice, Lords of Appeal in Ordinary and Master of the Rolls, and the puisne judges are £ 10,000, £ 8000, £ 6000 and £5000 respectively. There is no age limit for retirement. But a retired judge gets an allowance of £ 3500 a year.

There was no single form of judicial organization till 1873.

Organisation  
existing before  
1873.

There were various courts with varying jurisdictions, e.g. Common Law courts, courts of Chancery, admiralty, etc. The King's

Bench, Queen's Bench, Common Pleas and the Exchequer were grouped together as common law courts.

—Common Law  
courts

The King's Bench as the oldest had jurisdiction over private persons and criminal cases.

Till about 1837 the Common Pleas dealt with cases between private persons and levy of fines. Since the beginning of the reign of Queen Victoria, it looked into cases of disputed elections. The Court of Exchequer was competent to deal with cases of revenue and acted as a court of pleas between

—Court of  
Chancery

subjects from 1841. Each of these common law courts had five judges in 1868. The

Lord Chancellor presiding over the Court of Chancery, decided cases arising out of the unfairness of the application of the common laws. The Court of Admiralty existed

—Other courts

since the reign of Richard II. Besides these there were special courts for Bankruptcy, Relief of Insolvent Debtors (1847-1861),

Divorce and Matrimonial Causes (1857). Appeals from the Admiralty and the Probate Courts lay to the Crown and the Judicial Committee of the Privy Council. There was, however, no appeal in criminal cases.

The Judicature Act of 1873 united all these different courts into a single high court of justice. It established the Supreme

Judicature Act,  
1873 and Deve-  
lopment of  
Supreme Court  
of Justice

Court of Judicature, which was divided into a High Court and Court of Appeal. The High Court was given jurisdiction over all the three courts of common law, and courts of Chancery, Probate, Divorce and Matrimonial Causes, Admiralty, assizes, Lancaster

and Durham Courts of Pleas. In 1883 its jurisdiction was extended over Court of Bankruptcy. Two years before, that is, in 1881 the five divisions of the High Court were consolidated

into a single division known as the Queen's Bench. The Court of Appeal was assigned appellate jurisdiction from the High Court, Chancery Courts of Lancaster and Durham and also cases in lunacy or bankruptcy. In 1934 it was also given appellate jurisdiction over the county courts. The above-mentioned court consists of the Master of the Rolls and eight other Lords Justices of Appeal. A new Court of Criminal Appeal, consisting of the Lord Chief Justice and judges of the king's Bench, was created after 1898 to deal with appeals from Quarters and Assizes. The final stage in the judicial hierarchy for the United Kingdom is the House of Lords. Of course in criminal cases the last authority is the pardoning power of the Crown. For appeals from the courts of Channel Islands, Consular Courts, dependencies, Crown colonies or dominions, the highest court is the Judicial Committee of the Privy Council. Each appeal is heard by a board of 3 or 5 comprising the Law Lords, the Lord Chancellor or ex-Lord Chancellors and Lords of Appeal in Ordinary and some members of the Privy Council. The opinion of majority of judges is delivered not in the form of a judgment but as an advice to the Crown for agreeing to the verdict of the dominion or colonial court or to return the case for a new hearing.

## II. The Courts

There are various types of Courts in the United Kingdom. There is no uniformity in some special courts of Scotland, Northern Ireland and the rest of the United Kingdom. However, there is some distinction between civil and criminal courts applying the laws.

The lowest of the Civil courts in England and Wales are the county courts, whose maximum number of judges is eighty.

Civil Courts      These judges are salaried and retire generally at the age of seventy-two. A single judge can preside over a number of county courts, because most of these courts do not sit continuously. These courts, numbering now more than 450, deal with all types of common law cases including agriculture holdings, rent restrictions, hire-purchase agreements etc. In cases of fraud, the defendant is allowed to appeal to the judge that the trial may be before a jury of eight. But for the London County Council, the lowest court is the Mayor's and City of London Court. The

speciality of this court is that unlike the county courts, the jurisdiction is unlimited. The county courts are entitled to entertain a suit where the value of property is not more than £ 500 or where the amount claimed is not more than £ 400. The city of London Court is usually presided over by a judge appointed by the City of London. Some boroughs are served by ancient survivals of mediaeval borough courts like the Salford Hundred Court, Liverpool Court of Passage and Bristol Tolzey Court. Till 1934, appeals from county courts were heard by the High Court. But since 1934 appeals from county Courts, Mayor's and City of London Court are heard in the Court of Appeal. The supreme Court of appeal in all civil cases in the United Kingdom is the House of Lords. Appeals are disposed of by five out of the nine Lords of Appeal in Ordinary.

In Scotland there are three types of civil courts, namely Sheriff courts, Scottish Land Court and the Court of Session. The twelve Sheriff courts for the 12 Sheriffdoms have wider powers than the county courts of England and Wales. The Land Court deals with agriculture cases, and is presided over by a judge. The highest jurisdiction over civil cases is exercised by the Court of session established in 1532 in Scotland. This court has 15 judges who decided cases in its two branches — Inner House and the Outer House. Leave of appeals from the Inner House can be made to the House of Lords.

Minor Criminal cases are tried by magistrates or justices of the peace in each county and each borough, which has its own commission of the peace. These justices are appointed by the Crown on the recommendation of the Lord Chancellor. There are approximately 19,000 justices of the peace including 3700 women. Some of them are honorary, some are only paid allowances. They are entitled to try such cases in which the fine does not exceed £ 5 or the jail sentence 14 days. Where two or more justices sit as a court it is known as petty sessions. The Petty Sessional Courts have greater power to levy fines or award imprisonment than the county court presided by a justice of the peace. But in most cases they cannot award more than 6 months' imprisonments. A large number of cases under the Larceny Act, 1916 are tried in Summary Jurisdiction courts. After the passing of the Justices of the Peace Act,

Criminal  
Courts

1949 Petty Sessional Courts have taken over the cases decided previously by the separate commissions of the peace in non-county boroughs.

Higher above the justice of the peace court is the Quarter Sessions, which consist of the majority or all the justices of the peace in an administrative county or county borough. These courts are so named because they normally meet four times a year. There are two distinct branches of Quarter Sessions — county sessions and borough sessions. A chairman or deputy Chairman presides over each of the 65 courts of county quarter sessions. A Recorder who is a salaried barrister presides over each of the 96 boroughs. But none of the courts of quarter sessions has jurisdiction over such offences which can be punished with sentence or imprisonment for life. The Courts of Assize try all cases of serious crimes, e.g. armed robbery, arson, embezzlement, kidnapping, murder etc. A judge of the Queen's Bench or Commissioner of Assize moves from one country town to another. Normally Assizes are held thrice a year in each county. Four times a year the Assizes sit in Manchester, Leeds and Liverpool. According to the Criminal Justice Administration Act, 1956, the Crown Courts situated at Liverpool and Manchester, act as Courts of Assize in and for the West Derby and Salford Divisions of Lancashire, and as courts of Quarter sessions for Liverpool and Manchester.

An appeal from convictions or sentences in quarter sessions, assizes or Crown Courts may be taken to the Court of Criminal Appeal, established in 1907, which consists of at least three judges of the Queen's Bench division of the High Court of Justice. An appeal from the verdict of the court of Criminal Appeal may be carried to the House of Lords provided the Attorney-General certifies that some important legal point is involved in the case. The last legal resort for a convicted criminal is the request for the royal prerogative of pardon. But the monarchs have no power either to remit judgment in disputes between subjects or those who are convicted for unlawful committal to prison out of the realm. The sovereign usually agrees to the advice of the Home Secretary, but sometimes the monarchs have definite views. Queen Victoria did not favour the commutation of sentences of men who murdered their wives. Edward VII and George VI also sometimes differed from views of their Home Secretaries.

There are other types of Courts in England and Wales. A Juvenile Court, consisting of at least two and not more than three judges, deals with Offences excepting homicide committed by persons below the age of seventeen. Amongst the three judges it is necessary that there must be at least one male and another female judge. Courts other than the juvenile are forbidden to sentence persons below 21 years of age to imprisonment unless there is no other way of improvement of a criminal, according to the Criminal Justice Act 1948 and Criminal Justice (Scotland) Act, 1949. According to the Summary Procedure (Domestic Proceedings) Act, 1934 matrimonial disputes are heard in a court consisting of two or three judges, two of whom must be male or female. The public are not admitted to hear the proceedings of the juvenile and matrimonial cases. Another special court is the Coroner's court, which is presided over by a Coroner, who is appointed by the county council but removable by the Lord Chancellor. In pursuance of the Coroners (Amendment) Act 1926, he must be a barrister, solicitor or medical practitioner of at least 5 years standing and must give the verdict with the help of a jury consisting of 7 to 11 persons. His duties are to enquire into the causes of violent, suspicious or unnatural deaths or holding inquests into treasure trove. In Scotland the former type of duty is performed by the Procurator Fiscal and not the Coroner. The Ecclesiastical and Military Courts have jurisdiction over only ecclesiastical or military affairs.

### III. Peculiarities of the British Judicial System

The British judicial system has been highly praised for its dignity and speedy disposal of cases. The Times reported in its issue dated 8th February, 1950 the views of the Indian High Commissioner when the Judicial Committee of the Privy Council was hearing its last appeal from India in these words : "nothing has impressed the people of India more than the high sense of detachment, independence, and impartiality which have invariably governed the deliberations of the Privy Council". A year earlier the American Governor Thomas E. Dewey observed on the English law courts that "your legal procedure is, of course, superb. There are four judges in London doing the same work that we have thirty for in New York" (The Times, 19 May 1945).



The praise for the British Courts is also due to other factors. Survivals of mediaeval courts like the Central Criminal court of the Old Bailey, the Mayor's and the City of London Court, King's Bench, perform judicial duties as efficiently as modern courts. Quick action or responsibility of legal administration to Parliament hardly suffers when there is no provision of a Ministry of Justice. The responsibility of administration of justice lies with the Lord Chancellor, Home Secretary and the Prime Minister. The provision of legal aids has mitigated the hardship of the poorer sections of the community and enable them to defend a legal right. Those whose income does not exceed £ 420 a year are entitled to receive legal aid. The administration and organisation of the scheme has been entrusted to each of the twelve areas in England and Wales to a committee of solicitors and barristers. The whole cost of a litigation is provided to the poor prisoners in criminal cases under the Poor Prisoners' Defence Act, 1930. The purposes of the Legal Aid and Advice Act and Legal Aid and Solicitors (Scotland) Act, 1949, was "to improve and extend the existing arrangements in Civil proceedings so that no one would be financially unable to prosecute a just and reasonable claim or to defend a legal right and to make the facilities already available in criminal proceedings more easily accessible to those who needed them". Another peculiarity of the judicial administration is the principle of social rehabilitation and an attempt to reform the offender. After the passing of the Homicide Act, 1957, death penalty is imposed only for capital murders e.g. two or more murders previously, any murder committed in course of theft, any murder by shooting or by causing an explosion, any murder to escape from lawful imprisonment or arrest or murder of a police officer, official spy, or prison officer in duty. All other types of murder are punished with imprisonment for life which normally runs for fifteen years. The provision of trial by jury is almost a sure indication of impartial justice in the United Kingdom.

#### IV. Defects in the British Judicial System

The Judges in the United Kingdom are independent of the Executive, but they are drawn from the same class as the one from which the Cabinet Ministers come. Class bias of Judges Professor Hilton has calculated that out of 156 County Court Judges, Recorders etc., 122 are products of the expensive public schools. Their ideas are

of the class to which they belong. In time of emergency, when the latent conflict between alternative social orders manifests itself, it is quite natural that they will defend the order to which they belong. The judges are perfectly sincere and honest, but in the interpretation of laws relating to workmen's compensation or improvement of working-class conditions which impose responsibility on employer, they try to construe it away. "The general trend of such interpretation", observes Greaves, "has been, with perfect sincerity, in a single direction, conservative of the economic and social structure accepted as desirable during the judge's formative years and in the circles in which he moves."

In theory, the Courts of Justice are open to all, and the poor and the rich have the same prospects of receiving equal justice. An expensive hotel is also open to all, but those who are not in a position to pay the bill, cannot enter it. It is equally difficult, if not impossible for the poor to engage the services of lawyers. The government maintains a public prosecutor, but no public defender. There is, indeed, the Poor Persons Defence Act, but according to Gurney-Champion (*Justice and the Poor in England*) the aid provided comes too late and is not given as a matter of right. A writer in the *Political Quarterly* (1933), has observed that "the unfortunate litigant who is neither rich nor so poor as to qualify for aid as a poor person may risk everything when the machinery of the law is set in motion for or against him . . . and many cases are settled, perhaps on terms unfair to the weaker party, which under a reformed system might be equitably tried out before the courts."

The Machinery of Government Committee of 1917-18 recommended the creation of a Ministry of Justice with a view to providing responsibility to Parliament in legal administration. The Lord Chancellor is the head of the judiciary, but he belongs to the House of Lords, and he has no representative in the House of Commons, which body, therefore, cannot hold any minister responsible for the administration of Justice. The creation of a Ministry of Justice is also necessary to simplify, and co-ordinate the existing laws and "to see that the principle of equality before the law, so proudly asserted, shall come nearer to realisation."

## V. Development of trial by Jury

Trial by jury is a mode of trial by which a few citizens, selected for the purpose are constituted the judges of the truth of the facts in suits between parties, and compelled to discharge this duty, but in sub-ordination to the higher judge who has distinct functions of control. In the jury trial there is an association of laymen and experts, of the "learned" judge and unlearned jury like the co-operation of Cabinet Ministers and Civil Servants, of Town Councillors and Town Clerks. But as the expenses of the Jury have to be paid by the accused and as the Jurors are selected from well-to-do persons, the Jury System has become unpopular now.

Its characteristics

Jury trial, as now known and practised, did not exist in the Anglo-Saxon times though it has been the natural development of other rudimentary forms of trial then prevailing. In the Anglo-Saxon age each party to a case brought twelve persons, known as *Compurgators* to swear to his truthfulness and honesty. The compurgators were not jurors but really witnesses. A law of Ethelred II charged the twelve senior thegns of each hundred with the task of presenting criminals for judgment. But there is no means of knowing whether any connection exists between such a body and the juries of Henry II's reign.

Trial by jury is mainly the development of a Norman idea. When the Norman Kings wished for information on local matters, each district was called on to elect twelve men, who swore to answer truthfully. It was by means of such a process (known as inquest by sworn Recognitors) that the information on which Domesday Book was based, was collected. Henry I also used this process for fiscal purposes.

In the Norman period

Henry II applied this system to strictly judicial purposes. He made use of recognition for the settlement of land disputes by the Grand Assize, which provided that any one whose claim to his freehold was disputed, could refuse trial by battle and apply for trial by jury. *Four knights of the county where the lands lay were to choose twelve knights from the same district and these were bound to declare on oath which of the two*

Jury in Civil suits

*disputants had the better claim.* The use of jury in criminal case is first mentioned in the *Assize of Clarendon* (1166), which provided that inquest was to be held in each county, and hundred, by 12 *lawful men* of the hundred, and *four* lawful persons of

Jury in criminal cases the township, to present all reputed offenders who were thereupon to undergo the ordeal by water. This was the origin of the Grand

Jury or Jury of presentment. When the ordeal was abolished by a decree of a council of the Church, held in 1215, the custom arose of having a second or Petty Jury to decide on the guilt or in-

nocence of persons accused by the Grand Jury. The Petty Jury of the present day is composed of persons who have got no previous knowledge of the case they are to try. But the Petty Jury of Henry II's day were witnesses rather than judges of truth, that is to say, they based their decisions on their own previous knowledge and not on evidence given in court. But by degrees it was found that the Petty Jurors were often too ignorant of the case to come to a decision. So by the time of Edward I, a custom arose of "afforcing" the jury, that is adding to it persons who were familiar with facts. By the time of Edward III, the Jury Afforcement developed into a sworn body of witnesses without any judicial function, whilst the original Petty Jury confined themselves to acting as judges of fact. At the same time it was decided that the Petty Jury must be unanimous in their verdict. About the time of Mary Tudor the principle that the Jury should have no previous knowledge of the case was firmly established.

In all criminal cases the Grand Jury was the medium of accusation. They performed the duty of public accusers; they did not try an accused person but all indictments were in the first instance submitted to their consideration, for the purpose of

The Grand Jury and Petty Jury

seeing whether there was enough of doubt or suspicion to make it necessary to put the accused on trial. Accordingly in every County and Borough in England where Sessions of the Peace or Assizes were held for criminal trials, a jury of not less than 12, nor more than 23 men, was summoned to see that there was some foundation for each indictment. But an act passed in 1925 provided that the jury would not be called in the court of Quarter Sessions if the prisoners pleaded guilty. The Administration of Justice Act, 1933

abolished the Grand Jury, except the summoning of juries for certain purposes like indictments for offences committed abroad by public officials by London and Middlesex courts. This exceptional procedure was also forbidden by clause 31 (3) of the Criminal Justice Act, 1948. At present only the petty jury is summoned in the Coroner's Court to decide when death is caused by murder, manslaughter or infanticide or accidents arising out of use of a vehicle in a street or public highway. If the jury finds out the criminal, the coroner commits that person for trial at assizes.

In civil cases prior to 1933 the parties could demand a jury. But since that year the facility of a jury could be granted by the judge only when cases were concerned with claims of defamation, libel, malicious prosecution, false imprisonment, seduction, breach of promise of marriage, fraud etc. In other types of civil cases, the judge has the option of acceding to the request of the parties to allow a jury.

Jury trial is now being used very rarely. In 1936 the civil courts summoned the jury only in 5 per cent of the cases. Even in criminal cases of less serious nature, jury is being used only in 1 per cent of them.

## VI. Struggle for Civil Liberty in the Stuart Period

The Stuart Monarchs had very scant regard for the Civil rights of the people. When James I was coming from Scotland to assume the Crown of England, he found a thief on the way and immediately hanged him to death without regular trial or a regular court. This was typical of the attitude of the Stuart Kings towards the freedom of subjects. They arrested persons who dared to criticise the arbitrary exercises of power by them. They kept them indefinitely under detention in violation of the ancient Habeas Corpus Acts. Freedom of the Press was severely restricted. Liberty of religion was unknown. Life and property of the subjects were subject to the whims of the King. The English people fought valiantly against the Stuart Kings and took effective steps to secure the recognition of personal liberty. The basic principles of the Rule of Law that no man can be arrested except by a proper warrant or imprisoned without proper trial before an ordinary court were violated frequently.

James I interfered with the individual liberty of citizens in very many ways. He proposed to regulate by proclamation the

building of houses in London and to forbid the manufacture of starch from wheat. Sir Edward Coke, the Chief Justice of the King's Bench was consulted by the King but he and his colleagues emphatically declared that the King could not create an offence by mere proclamation, nor could he alter the existing laws by his own authority. They further declared that it was illegal for the King to punish in the Court of Star Chamber any one for an offence which was not at the same time punishable in the ordinary courts. James punished Coke by degrading him from office and sending him to prison in 1616. This sort of vindictiveness cowed down the opposition of other judges but it was a great moral blow to the prestige of the King.

The successors of James also tried to keep the judges subservient to them. Charles I dismissed Chief Justice Heath and Chief Baron Walter. When the Petition of Right was being passed by Parliament, Charles I asked Chief Justices Hyde and Richardson whether by assenting to the Petition the King excludes himself "from committing or restraining a subject, for any time or cause whatsoever, without showing a cause?" The Chief Justices indirectly replied that there was no fear of losing the arbitrary power of arrest or imprisonment. Charles II dismissed three Chief Justices, and six Judges. James II asked the Judges if it would be legal for him by the exercise of royal prerogative to dispense with the operation of the Test Act. Four of the Judges decided contrary to his wishes, whereupon he immediately dismissed them and filled their places with four others who supported his view. He then secured an unanimous decision by the court that the King had power to dispense with the operation of a law. He got in Judge Jeffreys a subservient instrument of his tyranny. He removed from the Bench not less than 12 judges for refusing to aid him in his schemes.

While the Stuarts made the Common Law Courts and their judges subservient, they tyrannised over the people through the prerogative Court like the Court of Star Chamber, the Court of High Commission, the Council of North and the Council of Wales. The Star Chamber could not inflict death sentence but it could order mutilations, rigorous imprisonment, banishment and confiscations of property. The Court of the Council of the North and courts on the borders of Wales entirely superseded the Common Law courts in those regions. In parts of England



if the arbitrary courts seemed to be inadequate the King could set up, through his discretionary power, military courts for punishing his enemies. The Long Parliament abolished all the prerogative courts. But James II revived the Court of High Commission in another form. It was abolished by the Convention Parliament.

The Stuart had dared to play with the liberty of the subjects because the judges were removable by the King. This was changed by the Act of Settlement, which made the tenure of office on the part of the judges permanent, or during good behaviours and made them removable upon an address to the crown passed by both Houses of Parliament. The judiciary has, thus become the guardian of the liberty of the people.

The Stuart period witnessed another significant vindication of the right of individuals to a prompt and efficacious trial before a legally constituted court in cases of arrest and illegal imprisonment. There were provisions in the Common Law by which any freeman imprisoned was entitled to demand of the court of King's Bench a writ of *habeas corpus*. By it the keeper of the prison had to produce the body of the prisoner before the court and state the cause of arrest and detention. But the Jailer was not bound to make an immediate return to the writ. The King's Bench could not probably issue the writ during the vacation and the power of the Court of Common Pleas to issue such a writ was doubtful. Charles I arbitrarily arrested Sir John Eliot, Selden and other members of the House of Commons after the dissolution of Parliament in 1629. When they applied for the Habeas Corpus, it was replied that they had made notable contempts of the King and had stirred up sedition. Charles II secured the detention of political offenders in distant and unknown places.

All these malpractices were stopped effectively by the *Habeas Corpus Act* of 1679. It provides that on complaint and request in writing by or on behalf of any person committed and charged with any crime, except treason or felony, the lord chancellor or any of the judges in vacation, can award a *habeas corpus* for such prisoner, returnable immediately before himself or any other of the judges. In the cases of treason or felony the prisoner shall be produced in the first week of the next term or the first day of the next session, or else admitted to bail, unless it appears that the King's witnesses cannot be produced. In that case he must be either tried in the second

term or session or discharged from his imprisonment. The Habeas Corpus Act of 1679, however, did not guard against falsehood in the return, nor did it provide any remedy in cases where a person has been imprisoned for charges other than criminal.

In the Stuart period there was strict censorship of the Press. Before the Civil War the Press had been placed under restraint by royal prerogative, that is, by Orders in Council. While Charles II ruled, the Press was under strict surveillance by the Licensing Act of 1662. The Act restricted the right to print to those who secured license for a term of years. In 1694 the statute for licensing expired. The Press was thenceforward allowed to drift in the direction of freedom. Thus, one by one, the essential elements of civil liberty were secured by the people of England towards the close of the Stuart period.

## VII. Civil Liberty since the Act of Settlement

The defects of the Habeas corpus Act of 1679 have been remedied by an Act of 1816. The application of the principles embodied in the Act of 1679 have been extended to civil cases and cases of imprisonment for debt. The Assizes Relief Act, 1889 has ensured speedy trial of all persons charged with felony or misdemeanour in the courts of Quarter Sessions.

The judges exercise control over judicial and quasi-judicial acts of the executive by use of *mandamus*, *Certiorari* and *prohibition* according to the Administration of Justice Act, 1938. *Mandamus* is an order to a body or person to do his duties. The writ of *prohibition* issued by a superior court, prevents an inferior court from proceeding with a case. The writ of *Certiorari* also prevents an inferior court from deciding a case which can be finalised in the court of Kings Bench. But there are several restrictions to the jurisdiction of the court. There can be no writ of prohibition against martial law tribunals. Neither prohibition, nor *certiorari* can be invoked against the Church Assembly, because it does not exercise judicial functions.

There prevailed the practice of issuing general warrants, by virtue of which the executive could arrest any person. It was a ready means for the exercise of much petty tyranny both in the seizure of persons and of papers. In 1763 Wilkes was arrested and imprisoned on a 'general warrant', that is, a warrant not specifying any person by name, but directed against "the authors,

printers, and publishers generally" of No. 45 of the paper, the *North Briton*. Wilkes was a member of the House of Commons, but the House of Commons resolved "that privilege of parliament does not extend to the case of writing and publishing seditious libels." Wilkes was expelled from the House. But he was again and again elected from Middlesex and repeatedly refused a seat in the house. Ultimately he was returned to the new parliament in 1774 and the proceedings against him were expunged from the journals of the House of Commons. The issuing of general warrants was declared illegal after the agitation of Wilkes' case.

Sir Ivor Jennings points out the limitations of civil liberty enjoyed by the English in the following words: "A man may say what he pleases provided that he does not offend against the laws relating to treason, sedition, libel, obscenity, blasphemy, perjury, official secrets, etc. He may form associations provided that he does not offend against the laws relating to trade unions, friendly societies, religion, public order and unlawful oaths. He may hold a meeting where and how he pleases so long as he does not offend against the laws relating to riot, unlawful assemblies, nuisance, highways, property etc."

Freedom of the Press is restricted by the law of libel and several recent enactments. The British law of libel is so comprehensive that any body may be punished for making any kind of criticism. P. Hickson and Carter-Ruck in their recent work entitled '*the Law of Libel and Slander*' observe sarcastically: "If anyone wishes to be certain he will not render himself liable to pay damages for libel, the advice which he must be given is simple though perhaps startling. All he has to do is to refrain from writing, printing, or publishing *anything whatsoever*" (*Italics ours*).

The Officials Secrets Acts, passed between 1911 and 1939 prohibit the Press from publishing any matter covered by these Acts. The Corrupt and Illegal Practices Prevention Act, 1895 restrains the Press from publishing false statements of facts regarding a person contesting an election. According to the Summary Procedure (Domestic Proceedings) Act, 1937 and Children and Young Persons (Harmful Publications) Act, 1955, the Press is liable to punishment if it publishes divorce proceedings excepting names of parties, charges, legal arguments, and results. The publication of details of matrimonial cases might do moral harm to children.

The cause of liberty has been eclipsed to a certain extent since 1919. "There have been more prosecutions", wrote Joad in 1934 "in England for the expression of opinions disliked by the Government during the fifteen years that have elapsed since the war than in the half century before 1914." The charge is true to some extent with reference to rights of public meeting, associations, and property. The Public Order Act, 1936 was necessitated by the demonstrations and public meetings of the Fascist Party which caused much disorder in Britain. This Act prohibited wearing of political uniforms in public places or public meetings, use of weapons, disorderly behaviour or use of threatening, abusive or insulting words in a public place or public meeting with the intention of provoking a breach of public peace. Prof. H. J. Laski and W. Thompson showed that the Public Order Act, 1936 was also used to restrict not only Fascist but also Socialist or Communist processions and meetings. Sir W. Ivor Jennings thinks that this Act conferred discretionary powers upon the police (*The Law and the Constitution*, p. 262). Unlawful associations which threaten to disturb or deprive the community of the essentials of life, like food, water, fuel, light or means of locomotion, are dealt with by emergency powers. When some trade unionists declared the general strike without any regard for the essential interests of the State, government handled the situation by passing an act. The Trade Disputes and Trade Unions Act, 1927 aimed at declaring illegal any strike or lock-out which "has any object other than, or in addition to, the furtherance of a trade dispute within the trade or industry in which the strikers are engaged, and is a strike designed or calculated to coerce the Government either directly or by the infliction of hardship on the community". This Act was, however, repealed in 1946. A state of emergency was again declared in 1948 and 1949 when an unofficial strike of dockers took place in London. Parliament has recently sanctioned the acquisition of land for public purposes with compensation. But the amount of compensation is regulated by Acquisition of Land (Assessment of Compensation) Acts, 1919 and 1946 and by the Lands Tribunal Act, 1949. The Executive is authorised by the Emergency Powers (Defence) Act, 1940, to acquire any property for defence of the realm in times of national danger. In peace times, the public authorities have been empowered to

acquire any property and develop a land for planning purposes by the Town and Country Planning Acts passed in 1947, 1953 and 1954.

During wars emergency powers are exercised in a manner which lead to the curtailment of fundamental liberties. Instead of suspending the *habeas corpus*, the Executive secured the safety of the public and the defence of the realm by the Defence of the Realm Acts during the first and second World Wars. The Emergency Powers (Defence) Act, 1939 empowered the authorities to make regulations by Order-in-Council and also to order the detention of persons even without trial and enter and search any premises. During the Second World War conscription was imposed by National Service (Armed Forces) Act, 1939 and its extensions between 1941 and 1948. Even the industries could be controlled by Defence Regulation 55 of the Emergency Powers (Defence) Act, 1939. Defence Regulation 39A and B of the above-mentioned Act imposed restrictions on propaganda and publication of news. These regulations were actually used to suspend the publication of the *Daily Worker* in 1941.

Sometimes in a period of national crisis the ordinary laws of the realm of England are suspended. We have already referred to the General Strike and Coal Strike 1926, dockers' strike, 1949 and their consequences. In order to tackle the deteriorating economic situation, some fresh clauses were added in 1947 to the Supplies and Services (Transitional Provisions) Act, 1945. The clauses were introduced for two principal purposes : (a) fostering and directing exports and reducing imports or imports of any classes, and (b) generally, for ensuring that the whole resources of the community are available for use, and are used, in a manner best calculated to serve the interests of the community. In periods of crisis, liberty seldom flourishes. But it must be said to the credit of the English government that even during emergencies it allowed challenge to the acts of the executive in the courts.

### VIII. Growth of Religious Liberty

Intolerance was the order of mediaeval times. The Church of England which repudiated the supremacy of the Pope but retained the episcopate, sacraments and creeds, demanded the recognition of its authority by all subjects.



According to the Act of Supremacy, 1534, the Sovereign was the Supreme Governor of the realm in spiritual, temporal and ecclesiastical causes. The relation between the Church of England and Crown was clearly and finally established by the Act of Settlement. The Sovereign, 'Defender of the faith' must join in communion with and uphold the Church of England. Those who marry Roman Catholics are excluded from ascending the throne. The believers in the Church of England insisted on the conformity of others in this established Church. A long struggle ensued. Various disabilities were imposed by the Clarendon Code and the Test Act on Protestant Non-Conformists and Catholics in the reign of Charles II.

Protestant Non-conformity gained considerable strength under the last two Stuarts and its services were rewarded by the Toleration Act of 1689. This Act did not remove the civil disabilities of Dissenters under the Test and Corporation Acts, but it exempted from the penalties against separate conventicles and absence from Church all persons who should take the oath of allegiance and supremacy and subscribe a declaration against transubstantiation. No relief was given to the Catholics and Unitarians.

Civil offices were practically thrown open to Protestant Dissenters by means of annual Indemnity Acts in the reign of George II. By the Relief Acts of 1778 and 1791 Roman Catholics were allowed a modified freedom of education and worship and were permitted to purchase landed property.

Thus at the beginning of the nineteenth century the Dissenters or Non-conformists, owing to the operation of the Test and Corporation Acts, were still legally disabled from holding any office under the municipality or the Crown. Moreover they had to pay taxes for the support of the Church of England though they did not belong to it. They had to register their place of worship with authorities of the Church of England. They could be legally married only by an Anglican priest.

The position of the Roman Catholics was worse still. They were excluded not only from all offices under the Crown and



municipality but were also disabled from sitting in either House of Parliament. A Roman Catholic or Dissenter could not take a degree from Cambridge; he could not even take his admission in the Oxford University.

The Quakers, Moravians and Separatists could not sit in Parliament as they had to take the oath of allegiance before taking the seat. But they were averse to taking any oath whatsoever. Jews were excluded from the service of the Crown and from municipalities because they were required to take oath on true faith of a Christian.

In 1828 the Civil Disabilities of dissenters were finally removed by the repeal of Test and Corporation Acts. They now obtained free admission to municipal office, and to almost all offices in the gift of the Crown. The Catholic Emancipation Act of 1829 admitted the Roman Catholics, on taking oath of allegiance with certain additions, to both the Houses of Parliament, to all corporate offices, to all judicial offices and to all civil and political offices, except those of Regent, Lord Chancellor of England and Ireland and Lord Lieutenant of Ireland. In 1832 the Roman Catholics were allowed the same liberty as the protestant dissenters.

An Act of 1837 enabled the Quakers, Moravians and Separatists to qualify for seats in Parliament and for all offices without taking an oath on condition of their making simple affirmation. All disabilities were removed from the Jews in 1858. In 1836 dissenters were allowed to solemnize marriages in their own Chapels. Compulsory Church Rates were abolished in 1868. The Church of Ireland which had administered only for a small minority of the people in Ireland, was disestablished in 1869. Dissenters and Catholics could not get any certificate of their age etc., owing to the registration of births, deaths and marriages in the Anglican Church only. This grievance was removed by an Act of 1837 which provided for the registration of births, deaths and marriages by civil authorities. The Universities Test Act of 1871 threw open all the degrees and lay academic offices to persons of all the creeds. Thus complete religious toleration was established in England before the last quarter of the nineteenth century.

## CHAPTER XVII

### LOCAL GOVERNMENT

#### I. History of Local Government in England

Local Government in England consists of two parts, namely rural and urban. The majority of the people lived in rural areas before the Industrial Revolution but the Four periods of history  
Boroughs owed their importance to the concentration of wealth and population in their areas. The history of rural government in England may be divided into four periods. The first period consists of the Anglo-Saxon age. In this period the Local Government was extremely democratic. In the Norman and Angevin period it was centralised. From the fourteenth century onwards the constitution of the local areas became increasingly aristocratic in character. In the nineteenth century Local Government again became democratic.

In the Anglo-Saxon period the local institutions like the townmoot, hundred-moot and the shiremoot  
Anglo-Saxon period  
were based on democratic principles, and were full of vitality.

The local administration was performed mostly in these local courts. The political life of the period was centred in the shire court, which was at once a judicial and administrative body.

The Norman conquest established a strong central administrative system and the influence of the Sheriff, the royal representative, increased in the shire. The Norman Kings preserved the old local system as a check on the feudal court. The Angevin Kings created a new link between the central authority and the local courts in the itinerant justice. The influence of the Sheriff declined in the 12th and 13th centuries. The growth of manorial jurisdiction in the Norman period curtailed the power of the Sheriff. The Inquest of Sheriff in 1170 gave a severe blow to the power of the Sheriff. The Justices of Assize took away most of the judicial functions of the Sheriff.

Norman period  
Causes of decline of Sheriff's power

A clause of the Magna Carta provided that the Sheriff should not exercise judicial function. The growth of central representation in Parliament diminished the importance of the shire as well as of the Sheriff. In the fourteenth century the Guardians of the Peace further restricted the functions of the sheriff. In 1340 the office of the sheriff became annual. At present the Sheriff performs some formal duties only. At the end of the 12th century the preservation of the royal peace was placed in the hands of certain knights in each shire before whom everyone had to take oath to maintain the peace. These Conservators of Peace became Justices of the Peace in 1360 and took over some judicial duties. The work of the shire court was transferred to them and the old shire court passed out of existence. The Tudors entrusted the local government to these Justices of the Peace and helped the development a local government by local men. But the J. Ps. belonged to the country gentry and hence the rural government became aristocratic in spirit.

The township were absorbed in the manors in the Norman period but the parish remained as a separate entity. The Hundred courts were also eclipsed by the Manorial courts. The Tudors revived the Parish as the unit of local government and especially of Poor Law administration. Act of 1723 allowed parishes to combine for poor relief purposes. In the 18th century areas of local administration grew up in a confused and unsystematic way.

The English town grew in importance in the Norman and Angevin period. The Boroughs law either in the royal demesne or within the manorial jurisdiction. The towns in the 12th century bought up the right of having separate courts of their own. Next, they purchased the right of making certain payments called *Firma Burgi* to the king directly and not through the Sheriff. Lastly, they obtained the right of conducting their administration by their own corporations. The right of incorporation was given either by a Statute of Parliament or by a Royal Charter. Each borough had a merchant guild which was in charge of important trading rights. In the 13th century the boroughs were called to send representatives to Parliament. Each borough settled its own method of election. From the Tudor period corporations became

close oligarchies, with hardly a trace of popular election left in their composition.

## II. Reform of Local Govt. in the 19th Century

At the beginning of the 19th century local administration of England was carried on by three authorities, (1) The Parish, (2) The corporate Town and (3) The County.

The Parish was at first almost entirely ecclesiastical in character. The great Elizabethan Poor Law made each of the parishes to support its own poor, and to appoint Overseers of the Poor, who were to levy a rate upon the property of the parish. Later on the parishes were charged with the function of maintaining the high roads. The parish authority known as the Vestry was the assembly of all the rated householders. In the beginning of the 19th century the Vestry had almost ceased to carry on its work. The parishes were committed to overwhelming burden of a poor rate for a system in which those who worked supported those who were idle.

The counties or shires were controlled by the Justices of the Peace. The Justices were appointed for life by the Crown from the big owners of land and combined the work of administering justice with that of maintaining local government. In the midst of these shires there had grown up great masses of urban populations outside the old cities. The sanitary condition of these places was sadly neglected.

Old important towns, called boroughs, were governed by corporations or municipalities. The ancient tradition of a town controlled by the votes of all burgesses in it, had largely perished. Each city was controlled by a tiny minority of "freemen." The administration was at once corrupt and inefficient. It was confined to the control of the very inadequate police, and of whatever corporate revenues the town possessed.

The first attack of the first Reformed Parliament was on the evils of the parish. The Poor Law Amendment Act of 1834 reorganised the system of relief of the poor, imposed central administrative control through three Poor Law Commissioners. It created "Guardians of Poor" to administer poor law relief.

and transferred the administration of poor relief from single parishes to unions, each consisting of 15 or 20 adjoining parishes. The law prohibited relief being given to the able bodied, and by compelling these to come into the 'work house' as a condition of receiving assistance, it destroyed the whole system of providing out of the poor rate a levy in aid of wages.

The Reformed Parliament passed from its attack on Poor Law administration in the parishes to an attack on the administration of the town. The Municipal Corporation Act of 1835 provided for the election of town councillors by all the inhabitants who had paid poor rate during the three years

preceding. The town councillors were to elect a certain number of aldermen, and the councillors and aldermen together were to elect a mayor who was to hold office for one year, the aldermen for six, and the town councillors for three years. The mayor, aldermen and town councillors together were to form the town council. The Public Health Acts of various dates made the Town Councils the local Sanitary authorities. The principal officer of the Council is the Town Clerk. The powers of the borough council vary widely in different boroughs. The council works through different committees. The titles of the committees themselves give an idea of the work of Town Council. There will be the Statutory Watch Committee to deal with the police, the Education Committee, Sanitary Committee, Committee to deal with the lighting of the town and if the town owns its markets or lands and property or libraries and museums, there are committees to deal with each of these subjects. If the town has established tramways, or supplies gas or electric light or possesses parks and public play grounds or municipal cemeteries, there will be committees to deal with these.

The great reforming Parliament thus established order and a democratic system in two of the three units of English Local Government. It left the county or shire severely alone under the rule of the nominated Justices of the Peace. It left the parish as an entity apart from its representation in the Poor Law Union to dwindle and disappear. Subsequently an enormous number of authorities was created for specific purposes — Local Boards, School Boards — Highway authorities and the like. In the early eighties an intelligent reformer could still describe

Condition  
in 1835

Municipal  
Corporation  
Act

British Local Government, "as a chaos of areas, chaos of franchises, a chaos of authorities and a chaos of rates." This confusion was straightened out by the Local Government Act of 1888 and the Parish Councils Act of 1849.

The Local Government Act of 1888 divided all England into administrative counties. There was either entire counties or else divisions of counties already in use for administrative purposes. In each of the 62 administrative counties was set up a Council resembling that of a corporate town. The County Council was to take over all administrative duties of the justices, except two, namely, the control of the Police and the granting of licenses for the sale of intoxicating liquor. All corporate town of more than 40,000 inhabitants were excluded from the administrative counties and were given the rank of County Boroughs. The Sanitary authorities and Local Boards in the town regions, which had not yet become cities, were formed into urban District Councils with practically the same machinery of Government as the city itself. In rural areas there were made Rural District Councils, which were, in fact the Guardians operating under another name.

The Parish Councils Act of 1894 replaced the Parish vestry by a Parish meeting of inhabitants, having either the Parliamentary franchise or the right of voting for Guardians and County councillors. If the Parish had more than three hundred inhabitants, the Parish meeting was to elect a Parish Council. Thus the Parish for purposes of Civil administration became entirely distinct from the Parish as an ecclesiastical area.

### III. History of Poor Law Administration in England

Owing to the abolition of monasteries, extension of enclosures, rise in the cost of living and other widespread economic changes, poverty increased to an enormous extent in England in the sixteenth century. Sturdy beggars began to move in from one part of the country to another, disturbing the peaceful life of citizens. Hence the Tudor monarchs had to grapple with the problem of poverty. Henry VIII passed a series of laws



exhorting the richer people to maintain the poor of the locality. Edward and Mary also passed some laws to mitigate the evils of poverty. But it was in the reign of Elizabeth that the Government for the first time recognised it to be a duty to provide for the poor. In 1601 the series of Poor Laws passed between 1563 and 1598 was consolidated. The great Elizabethan Poor Law of 1601 provided that contributions for the relief of the poor should be compulsory ; the funds were to be administered by the Overseers appointed and controlled by Justices of the Peace ; the Parish was to be the area of administration ; habitations were to be provided for the impotent and aged ; children of paupers were to be apprenticed ; boys till the age of 24 and girls up to 21, or until marriage ; stocks of lamp and wood were to be furnished for the employment of sturdy idlers ; houses of correction were to be set up for those who obstinately refused to work.

At the beginning of the eighteenth century the cost of Poor relief was increasing rapidly. To remedy this the Act of 1723 was passed. By it the area of relief was enlarged and parishes were formed into unions ; work houses were built and a work house test was imposed.

The Industrial Revolution accentuated the poverty of the labouring class towards the close of the eighteenth century. To mitigate the evils, Gilbert's Act was passed in 1782. It was a permissive measure which enabled the Overseers to dispense with the 'workhouse test' and to make allowances in aid of wages to able-bodied labourers. The violence of the French Revolution made thoughtful people of England eager to keep the poor contented. So the Berkshire magistrates adopted a resolution at a meeting at Speenhamland in 1795. This resolution is popularly known as the Speenhamland Act. It recommended to the farmers to raise wages in proportion to the rise in the price of provisions. If the farmer refused, the deficiency was to be made good out of the rates. This system spread over the greater part of England. It gave some help to the poor no doubt ; but it demoralised them terribly. They knew that larger the family they would have, greater the contribution would be from the poor rates. They did not exert themselves to earn sufficient wages. In order to maintain these

Condition  
between  
1723-95

idle improvident people the active and diligent classes were forced to pay rates. Thus a premium was put upon idleness.

The evils of the demoralising system were remedied by the Poor Law Amendment Act of 1834. The Act provided for the children of the poor, supported the old and the sick, took charge of lunatics and gave relief to the unemployed, and the whole cost was borne by the local rates. Parishes were grouped in Unions, and arrangements were made for ensuring economy and uniformity of treatment. The control of Poor relief was given to a Board of Poor Law Commissioners, who kept themselves in touch with the local authorities, the Guardians of the Poor, through inspectors. In the second half of the last century the percentage of paupers in population fell from  $6\frac{1}{4}$  to  $2\frac{1}{2}$ , the drop being chiefly in outdoor relief. The Act of 1834, however, did nothing to solve the great problem which applies to those who are willing to work and yet cannot find work. It made no distinctions as to whether a man's misery is his fault or his misfortune. A section of the Poor Law Commission of 1905-9 recommended that the Poor Law Union should be abolished and suggested the transference of Poor Law administration to larger areas. It also held that the causes of pauperism should be dealt with by the use of Labour Exchange, by State Insurance of the workers and by raising the age at which children might leave school.

These recommendations were partially carried out by the Asquith Ministry. Then by the Local Government Act of 1929, the existing areas and authorities were abolished and the work of Poor Law administration was transferred to County councils and County Borough councils, which were to act through a statutory committee known as Public Assistance Committee. This measure introduced economy and efficiency in working and equalised the incidence of the expense of administration between the richer and poorer areas.

Poverty is no longer regarded as a crime. The stigma which attaches to the person receiving help from the Poor Law Fund has been sought to be effaced by the Government. The National Assistance Act which has come into force from July 1948 is the logical corollary to the National Insurance Act passed in 1947.

The National Insurance Act has been further amended by a series of National Insurance Acts from 1949 to 1957. All

classes of persons above 18 years of age excepting married women engaged in household duties are required to contribute to these schemes. The National Assistance Board gives contribution to those who are unable to support themselves. It supplements the insurance benefits when they are insufficient. The Board also makes provision for accommodation of those persons who are out of employment for a long time.

#### IV. Present structure of Local Government

There are at present 62 Administrative Counties and 83 County Boroughs in Great Britain. The Administrative Counties are local authorities like the District Boards in India in some respects. As the Municipalities lying within a District are outside the jurisdiction of the District Boards, similarly, the Administrative Counties have got no administrative control over the County Boroughs. The big cities, majority of towns with a population above 75,000 and some 25 towns of lesser size enjoy the status of County Boroughs. These County Boroughs carry on the full range of Local Government services within their boundaries. In London, the local authorities are the London County Council, Corporation of the City of London and the metropolitan borough councils. Before 1960, there were 28 London boroughs, but in 1960 the Royal Commission on Local Government in London recommended a Council for Greater London covering a larger area in which 52 boroughs were to be established. This City Corporation is administered by the Lord Mayor, Aldermen and councillors. It has got its own police force, but the Home Secretary provides the police force for the London County Council.

All the areas excepting the County Boroughs fall within the Administrative County, which is sub-divided into Boroughs, Urban Districts and Rural Districts. The Distinction between Boroughs and County Boroughs is that a citizen of a County Borough finds all the municipal services rendered by his County Borough Council, but a citizen of a Non-county Borough gets these services performed partly by the County Council and partly by the

Borough Council. Thus, for example, lighting and cleansing of streets, collection and disposal of refuse, sewerage and sewage disposal, regulation of buildings, park, gardens, baths etc. and public health measures are rendered by the Borough Council. But the County Council administers primary, secondary, technical and agricultural education, takes care of the aged, infirm, deaf, dumb and blind and of orphans and children lacking parental care, and looks after the highways. There is no Non-county Borough with population above two lakhs ; but there are 18 County Boroughs with more than two lakhs of inhabitants. The Boroughs try to secure the status of County Boroughs for the sake of prestige, but the Administrative Counties resist such attempts with all their powers, because they would lose the revenue of the area as soon as they become County Boroughs.

There are 563 Urban Districts and 474 Rural Districts in England and Wales. These are within the jurisdiction of the Administrative Counties, and as such the Urban and Rural Districts citizens of these areas get certain services from the County Council and others from the District Council. The Urban and Rural District Councils, the Non-county Borough Council and even the Parish Council are not subordinate to the County Council. These councils are independently responsible for certain functions allotted to them, though the County Council may or must delegate certain functions to the Borough or District Councils, or use them as local executive agents. The Administrative County Council has got no power to levy any rate. The Boroughs, the Urban Districts and the Rural Districts collect a rate from which part of the expenses of the County Council, Borough Council and District Councils are met. The other parts of necessary expenses come from trading activities and Government Grant.

The Parishes are 11,100 in number, 7,300 of these have got councils and 3,800 are governed by meetings of the entire population.

Every local body, excepting the 3,800 Rural Parishes mentioned above, has got a council. The councils of Administrative Counties, County Boroughs and Non-county Councils Boroughs consist of a number of councillors, Aldermen numbering one-third of the councillors, and the Chairman or Mayor. In the Urban and Rural District Councils there is no alderman. The councillors are directly elected by

all the men and women above the age of 21 who have been placed upon the Register of voters as residing within the area on a qualifying date. The Act of 1949 has introduced this democratic residential qualification and has put an end to the restriction by which those who occupied land or unfurnished premises or their wife or husband could vote. No person now can exercise more than one vote in the same election. In the Election of Councilors Administrative Counties, Metropolitan Boroughs and the Rural Parishes all the councillors are elected at the same time and retire after three years. But in the County Boroughs and Non-county Boroughs one-third of the members are elected every year for a period of three years. This system gives a continuity of experience to the council and at the same time enables a better representation to the changing currents of opinion.

Aldermen are elected for six years by the councillors. The election or co-option, as it is called, is so arranged that half of the total number of Aldermen are elected at an interval of three years. An Alderman Aldermen may be coopted either from outside or from amongst the councillors. Generally he is elected from the councillors and the seat thus vacant is filled up by direct election by the citizens.

The Chairman of the Council is elected by the councillors and the Aldermen either from outside or from amongst the members of the council. The Chairman Chairman of a Borough and a County Borough Council is called a Mayor. The Mayor has got no special executive authority. He enjoys great prestige and influence. It is by his influence that he can improve the civic life of his area.

## V. Functions of Local Bodies

The Administrative Counties and County Boroughs have got much larger scope of functions than the District Boards and Municipalities in India. For example, administration of Police Force, Remand Homes, administrative arrangements for the protection and certification of lunatics and mental defectives, enforcement of the Shops Acts, Town and Country Planning, welfare services under the National Assistance Act of 1948, and care Difference between the function in India and England

of children under the Children Act of 1948 are the functions of the County Councils and County Borough Councils but not of any local body in India. Many of the English municipal bodies have got Buses, Trams, and Trolley vehicles to carry passengers, but very few of the Indian local bodies have got such arrangements.

The services performed by the Councils and County Borough Councils may be classified under five broad heads—

Protective	Protective, Communal, Social Welfare,
Services	Trading and Miscellaneous. The Protective

Services include Police and Fire Services and regulative work in connection with sanitation, building regulation, control of food supply, checking of weights and measures, management of Remand Homes, protection and certification of lunatics and mental defectives (but not control of lunatic asylums) and enforcement of the Shops Act. In the Counties the Police Authority is the Standing Joint Committee, consisting of the representatives of the County Council and the County Justices respectively. In the County Boroughs the Police

Authority is the Watch Committee. The

Police Act of 1946 empowers the formation of Joint Police Authorities for areas which may comprise both Counties and County Boroughs. The same act has taken away the Police functions of Non-county Boroughs and merged their forces in the County Forces. If, however, a Non-county Borough has a population of more than  $\frac{1}{2}$  of that of the county in which it is situated it is treated as a County Borough. The Police and Fire Services are recruited and managed according to the standards fixed by the Government, but they are controlled by the Local Authorities, subject to some overriding control by the Home Secretary. Large proportion of their cost is borne by the Government.

The Communal Services are those which are needed by all, and paid for by all collectively through rates. These include sewerage, sewage disposal, public cleansing, public lighting and the provision and maintenance of roads, excepting Trunk roads.

The Social Welfare Services comprise primary, secondary, technical and agricultural education, medical services, maternity and child welfare, housing, care of the aged, infirm, deaf, dumb and blind and care of the children who lack proper parental care. The cost of these services is borne by the State and partly out of local rates.



Provision of water, street transport, steam ferries, markets, and civic restaurants are included in the Trading Services of local bodies. Citizens are charged for these services. These are expected to be self-supporting. The miscellaneous function include levying and collection of rates and granting loans for the acquisition of small dwellings by citizens.

The expenses of these services are met from rates, licence fees, rental of municipal property, income from trading services and above all from the Government Grant.

How expenses are met      Roughly speaking, more than thirty per cent of the total income is contributed by the Government. The Rates contribute roughly one-third of the total expenditure required. The rates are not fixed by separate Assessors appointed by different municipalities as in India but are fixed by the experts appointed by the Board of Inland Revenue. This device makes the assessment fair and uniform throughout the country.

The importance and scope of local self-government have dwindled in recent years. The causes of loss of functions of the local authorities are due to lack of finance in providing adequate funds for expanding social services, mass unemployment, blurring of distinction between rural and urban areas, increasing importance of roads and technical advancement in transport, gas and electricity systems. Due to the passing of the Trunk Roads Act, 1936 and 1946, Electricity Act, 1947, Gas Act 1948, National Health Service Act, 1946 and the National Assistance Act, 1948, the local authorities have lost their control over roads, electricity, gas, health services and administration of poor law. Hospital services have now been transferred to *ad hoc* Regional Boards, which are under the ambit of the Minister of Health. In the sphere of education, the local authorities have to work under the supervision of the Ministry of Education, according to the Education Act of 1944. The Children Act of 1947 requires the local authorities to make provisions for those boys who lack parental care. It is the Government which decides on the policy of construction, repair or slum clearance in a local area. Moreover, some functions have been taken away from districts and boroughs and given over to the counties. There is now a single authority for education, police and planning for the whole county, after the passing of the Education Act, 1944,

Police Act, 1946, Town and Country Planning Act, 1947 and the Fire Services Act, 1947. The dignity of the local authorities has probably been lowered to a great extent by the transference of responsibility of rating valuation and assessment to the Commissioners of the Board of Inland Revenue.

## VI. Defects of Local Administration

The local authorities act as agents of the Government in many spheres of activities. They are burdened with the health services, education, housing, and town and country planning. But before the Second World War many of them had shown themselves unable to carry this heavy load. In 1943 the Labour Party suggested a regrouping of local government areas, mainly on the basis of the present county areas. Within each region there should be area authorities to administer purely local services.

Another defect of local administration in England is the haphazard way in which the officials are selected. There is no uniform system of recruiting officials by a Public Service Commission, as does exist in the case of the Civil Service. In some local bodies posts are given to political adherents, relatives or to the unemployed, thereby sacrificing the efficiency of administration. The Clerk of the Councils acts simply as the chief general adviser to the Council but he is not entrusted with control of appointment of all other officials, nor is it his function to co-ordinate the whole service. The lack of control and co-ordination is regarded as the most serious defect of local administration to-day.

There are at present 83 County Boroughs and 62 administrative counties. The County Boroughs administer all services within their boundaries and have no common administration with the counties surrounding them. The counties however, share their authority with the municipal boroughs, and the urban and rural districts beneath them. There is great variation in the size of both these types of major authorities in the local government. There are some County Boroughs which have got only 25,000 population whereas, there are others which have got 10,85,000 inhabitants. Similarly, some administrative

counties have jurisdiction over only 18,000 persons whereas others have over 22,70,000 persons.

It was proposed that the total number of County Boroughs and administrative counties should be reduced from 145 to 67

only. The object of the reform proposed by Recent proposals the Local Government Boundary Commission

in April 1948, was to introduce some kind of uniformity in population amongst the major local authorities. The Commission further proposed that a new type of County Borough was to be set up for areas having the lower population limit of 60,000. Such County Boroughs should be "most purpose authority"—that is to say, they would be under the administration of the surrounding county for certain major services including police, firebrigades and the more general aspects of town and country planning, but they would be completely independent in administering education and health services. The commission, however, was dissolved after 4 years in 1952. The recommendations made by it were not given effect to.

## CHAPTER XVIII

### THE COMMONWEALTH

#### I. Dominion status and Commonwealth

The term Dominion refers to the territory subject to a ruler. It was applied to countries outside England but under the sovereignty, or suzerainty of the English crown. In 1867

Canada was first designated a Dominion in the British North America Act. In 1931 the Statute of Westminster expressly stated that

Meaning of the term Dominion 'the expression 'Dominion' means any of the following Dominions, that is to say, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland.' The term 'Dominion' is no longer acceptable to the countries concerned. They prefer to be known as members of the Commonwealth.

In the sixteenth century Commonwealth meant a state, especially viewed as a body in which the whole people had a voice or an interest. In the seventeenth

The Commonwealth century it referred to a republic. The republican government in England between 1649 and 1660 was known as the Commonwealth. The federated states of Australia came to be known as Commonwealth from 1891 and especially from 1909. Now the term is being applied to the free association of member nations, each of which is a sovereign state. The members of the Commonwealth, in september, 1962 are sixteen, namely, the United Kingdom, Canada, Australia, New Zealand, Ceylon, Nigeria, Federation of Malaya, Siera Leone, Tanganyika, Jamaica, Trinidad, Tobago and the Republics of India, Pakistan, Ghana, and Cyprus. Newfoundland has become a part of Canada. The Irish Free State and the Union of South Africa have seceded from the Commonwealth. As early as 1940 Mr. B. K. Long wrote in *The Empire and the World*, "To deny the right of any Commonwealth community to pronounce itself a

Its status republic, or to secede, or to attempt to declare itself neutral in war, is to waste words.

There is no authority within the Commonwealth which can restrain any member-state from doing any of these things". The Commonwealth has got 750 million people in it. Indians constitute more than half the population.

## II. Evolution of Dominion Status

The genesis of Dominion status may be traced to the Durham Report of 1839. England had lost her first empire in North America because she failed to concede to the North American colonies the right to have responsible government, though they had representative institutions.

Durham Report 1839 England realised her mistake and recognized that population settlements, formerly known

as colonies, must not only have their own representative bodies, but must also control through these bodies their own executive governments. In his classic *Report on Canada* Durham advocated that the responsibility must be thrust on the Canadian people, by giving supreme power to their representatives and ensuring that the executive government should be responsible to the legislatures. He held that the Imperial Government should confine their action to matters truly imperial, e.g., foreign policy, defence, regulation of trade and the control of public

land, and in other affairs, the local administration should be left free. Responsible Government was conceded to the Canadians

when Lord Elgin was appointed the Governor of Canada in 1849. This was the first stage in the evolution of the Dominion Status.

The second stage was reached when between 1867 and 1909 the population settlements formed regional federations and constructed federal or quasi-federal constitutions, which were, however, formally enacted by the British Parliament. The Canadian federal scheme was not propounded in London and imposed

Regional federations on the Canadian people. The Canadians themselves formulated the scheme and the British Parliament merely enacted it without alteration in 1867. Australia became a federal state by an Act of 1900 and South Africa became a Union of four colonies in 1909.

The progress of Canada towards Dominion Status is marked by her securing the following rights between 1867 and 1914 ; (1) the right to make her own tide-water coastwise navigation laws—a right first exercised in 1870 ; (2) the right of the Dominion cabinet to veto a nomination to the office of the Governor-General—a right that has existed at least since 1882 ; (3) the right of the Dominion to direct representation on the judicial committee of the Privy

Six steps taken by Canada towards autonomy 1867-1914

Council at Whitehall—a right first exercised in 1897, when Sir Henry Strong, the then Chief Justice of Canada, took his seat on the Judicial Committee ; (4) the right of the Dominion to decide whether it will be a party to treaties made by Great Britain—a right enjoyed since 1872 ; (5) the right of the Dominion to make her own immigration laws, and to exclude paupers and other undesirables from the United Kingdom or elsewhere in the British Empire—a right first asserted and exercised in 1904 ; and (b) the right of the Dominion to appoint her own plenipotentiaries for the negotiation of commercial treaties and conventions—a right partially conceded as early as 1870, and fully conceded by the Imperial Government in 1907.

The period between 1917 and 1934 marked the third stage in the development of Dominion status. The Dominions secured full sovereignty in internal and external matters. At first the Canadian constitution could only be amended by an Act of the British Parliament. But there grew up a convention that amendment would only be made at the request of the Canadian Government and that such requests would not be refused. In 1949 an Act to amend the British North America Act 1867 relating to the process of amending the Constitution of Canada was passed by the British Parliament at the request of the Canadian Parliament. It provided that the Canadian Parliament could alter the constitution in all matters except the expressed powers of the Canadian Provinces, the position of schools, the use of the French and English languages and the five-year maximum life of the Canadian House of Commons. It may be argued that these exceptions diminish Canada's sovereignty, but it must be noted that these were made by the Canadians themselves with a view to safeguard the rights of the French-speaking catholic minority. If, in future, Canada ignores these exceptions the British Government would not prevent her.

Canada amends her own constitution, 1949

Appeals to British Privy Council stopped 1949

The right of making appeal from the Supreme Court of Canada to the Judicial Committee of the British Privy Council was stopped by the Act to amend the Supreme Court Act in December 1949. It was declared that "The Supreme Court shall have, hold and exercise exclusive ultimate appellate civil and criminal jurisdiction within and for Canada ;



and the judgment of the Court shall, in all cases, be final and conclusive."

The foreign relations of Canada were conducted by the British Government. Canada took the first step in this matter in 1871, when she began to negotiate commercial treaties. The first World War gave a great impetus to the recognition of the status of the Dominions in international affairs. To secure the fullest co-operation of the Dominions, the

Right to  
determine her  
foreign policy

British Government invited their Prime Ministers to the Imperial War Cabinet. Sir Robert Borden of Canada and General Smuts of South Africa gave expression to the idea of Dominion Status in London in 1917. The idea was expressed in a statement issued by the Imperial War conference in 1917. In pursuance of the spirit of the statement the Dominions were represented in their own right at the Peace Conference of 1919, and the ministers of the Dominions signed the Treaty of Versailles, each on behalf of his Dominion. When the League of Nations was formed the Dominions, as signatories of the Treaty, became original members of the League. Canada and Australia were given the power to rule over certain ex-colonies of Germany and her allies as Mandatory powers under the League.

In 1922 the constitution of the Irish Free State described the new State as 'a co-equal member of the Community of Nations forming the British Commonwealth of Nations.' In the same year Canada signed a treaty independently with the United States in regard to halibut fisheries. In 1924 the Irish Free State demonstrated its sovereignty by establishing its own legation at Washington.

Steps taken  
by Eire

The British Government as well as the Dominions felt the necessity of clarifying the position of the Dominions with regard to internal and external affairs. The Balfour Committee of the Imperial conference of 1926 defined the nature of the association of the Dominions with the United Kingdom.

Balfour  
Committee  
Report 1926

It framed the following formula, which was adopted by the Imperial Conference in 1926 :—"The Dominions are autonomous communities within the British Empire, equal in status, in no way subordinate to one another in any aspect of their domestic or external affairs, though united by a common allegiance to the

crown and freely associated as members of the British Commonwealth of Nations." The conference further resolved that the Governor-General of a Dominion was not to be agent of His Majesty's Government but only His Majesty's representative exercising the same constitutional powers as the King in great Britain ; that each Dominion Government had the right of tendering advice directly to His Majesty's Government on Dominion matters. It discussed the Locarno Treaty and stated that "in the sphere of foreign affairs, as in the sphere of defence, the major share of responsibility rests now, and must for some time continue to rest, with H. M. Government in great Britain". But it was explicitly stated that the Dominions could conduct their foreign relations and that neither Great Britain nor the Dominions could be committed to the acceptance of active obligations except with the definite assent of their own Governments. The conference of 1926 thus gave rise to a body of conventions or understandings which were accepted freely by each autonomous society within the Commonwealth.

The Imperial conference of 1930 decided that each Dominion had right to recommend the appointment of its Governor General.

It should be noted that the Balfour Committee declared the aims and objectives of the Commonwealth "Free institutions are its life-blood. Free co-operation is its instrument. Peace, security, and progress are among its objects."

### III. The Statute of Westminster 1931

The concept of sovereign nations, voluntarily united, in a Commonwealth was given legal expression in the Statute of Westminster. The conventions set up by the Imperial Conference of 1926 were crystalized into law by this statute.

It was passed by the British Parliament after each of the Dominion Parliaments had requested it by resolution to pass such a statute. The Statute of Westminster made each Dominion Parliament formally and legally the supreme authority for each Dominion, both for internal and external purposes, and thus made them all equal in their spheres, to the British Parliament in its own sphere.

The chief provisions of the Statute of Westminster are the following : The Colonial Laws Validity Act of 1865 will not apply further to any law passed by a Dominion. No law

Right to make  
any law

passed by a Dominion is to be void on the ground of repugnancy to the law of England or any existing or future act of the British

Parliament. The powers of a Dominion Parliament are to include the power to repeal or amend any such act of the British Parliament extending to a Dominion. But no act of the British Parliament is to be passed thereafter relating to a Dominion unless it is expressly declared in that act that the Dominion had requested and consented to the enactment thereof. The legislature of a Dominion is to have full powers to make laws having extra-territorial operation, and laws relating to merchant shipping and courts of Admiralty. The preamble to the Statute runs as follows : "Whereas it is meet and proper to set out by way of preamble to this Act that, in as much as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to Crown, it would be in accord

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with the established constitutional position of all the members of the Commonwealth in relation to one another that any alteration in

the law touching the succession to the throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom." This is really a corollary to the recognition of the full sovereignty of each Dominion Parliament and enables each and every Dominion Parliament to join with the British Parliament in any legislation affecting the succession to the throne. It is not, however, an operative clause of the Statute of Westminster, but merely a persuasive preface to the operative clauses.

The Union of South Africa did not formally accept the Statute of Westminster but enacted the Status of Union Act in

Action taken by  
the Union or  
South Africa

1934. This Act mainly repeated the provisions of the Statute but in its preamble the Union was termed a sovereign independent State. In one of its clauses it was stated

that any reference to the King should be deemed to be a reference to "the King acting on the advice of his Ministers of State for the Union."

## IV. The Abdication Crisis, 1936

The Abdication crisis tested the validity of the preamble to the Statute of Westminster relating to succession. King Edward VIII proposed that he would like to contract a morganatic marriage with the twice-divorced lady, Mrs. Simpson by which the issue of the marriage would be excluded from succession to the throne. The English law, however, does not recognise any morganatic marriage. Mr. Baldwin, the then Prime Minister of England, consulted the Dominion Governments by cable and telephone.

Mr. Mackenzie King, the Prime Minister of Canada informed the Canadian House of Commons that he was asked by Mr. Baldwin to state the opinion of the people of Canada whether Mrs. Simpson should become queen or be known simply as the King's wife. He further added, "Mr. Baldwin said that he wished' to have this information from the different Dominions in order that their views might serve as a guide to him in giving further consideration to the matter. I replied to Mr. Baldwin's communication, giving it as my view that the people of Canada would not approve of either arrangement." Edward VIII decided to abdicate and to marry Mrs. Simpson. The Dominion Parliaments were all consulted, and they agreed to the British Declaration of Abdication Act on different dates. Thus the Union of South Africa passed a separate Act on the 10th December, 1936 ; Canada, Australia and New Zealand passed the British Act on 11th December, and the Irish Free State passed a separate Act on 12th December. This means that George VI succeeded to the throne on three different dates in three different parts of the Commonwealth.

The Irish Free State took advantage of England's difficulty by speedily putting through certain important changes in her constitution. Mr. De Valera took the initiative in removing the Crown from the internal affairs of the Irish Free State by abolishing the office of the Governor-General. By an Executive Authority Act he laid it down that so long as the Irish Free State is associated with other Dominions, and so long as the King, recognized by those other Dominions as the symbol of their co-operation continues to act on their behalf, by the advice of their

Governments in appointing diplomatic representatives, and concluding international agreements, he may act in the same way for the Irish Free State on the advice of its Government. This practically made the Irish Free State a Republic. The new Constitution of the Irish Free State, which was approved by plebiscite in July 1937 was not formally confirmed by any action of the British Parliament. It begins with the words: "We, the people of Eire do hereby adopt, enact, and give to ourselves this constitution". This sort of wording inspired the fathers of the Indian constitution to make a similar beginning.

## V. Development of the Commonwealth from 1937 to 1962

The Imperial Conference of 1937 resolved that where different members of the Commonwealth became parties to the same multilateral treaty, each member is free from all responsibility in respect of the action of any other part. The treaty between Great Britain and Eire in 1938 released Eire from the obligations to help Britain in case of war. When the second world war broke out in September, 1939, Canada, Australia and New Zealand passed resolutions through their respective Parliaments to join the war and collaborate whole-heartedly with the United Kingdom. South Africa hesitated at first but ultimately decided not to remain neutral. All the Dominions, excepting Eire sincerely co-operated with Great Britain during the war.

In the second World War the Imperial War Cabinet was not revived. Mr. Churchill pointed out in 1941 that the members of the British Cabinet are responsible to the British Parliament, while the members of the cabinets of the Dominions are responsible to their respective Parliaments. Moreover, the addition of four members from the four Dominions would make the war cabinet unwieldy. He further pointed out that informal talks with the Dominion Prime Ministers are of great help—"In practice, however, whenever a Dominion Prime Minister visits this country—and they cannot visit it too often or too long—he is always invited to sit with us and take a full part in our deliberations." The Imperial conference, which used to meet at regular intervals

held its last meeting in 1937. It has been replaced by the meetings of Prime Ministers of the United Kingdom and the Dominions. They met in the spring of 1944, before the war was over, again in the spring of 1946 after victory had been won.

In 1947 the term Dominion seems to have been given up in favour of the word 'Commonwealth'. The Dominion office was renamed as the Commonwealth Relations Office. At first the association was known as the British Commonwealth of Nations. But gradually the adjective, 'British' was dropped.

In 1948 Mr. Herbert Morrison in reply to a criticism by Mr. Churchill stated: "We believe that the word 'Commonwealth' is a better word in spirit and accuracy to describe the extraordinary assembly of nations than the words 'British Empire' were. As the years rolled on, and with India, Pakistan and Ceylon joined up with the Commonwealth the use of the word 'British' as a description of the whole of the nation became a little more unreal as compared with previous times." In 1948 Eire became a Republic and in 1949 she seceded formally from the Commonwealth. The Union of South Africa also ceased to be a member of the Commonwealth from May, 1961.

The nature of the Commonwealth has radically changed since the joining of India, Pakistan, Ghana, Ceylon, Cyprus and Nigeria which are all republics. Previously the members were of European origin, but now the people of Asiatic and African origin form the majority. The six republican member-states of the Commonwealth do not owe allegiance to the queen but recognise her as the symbol of free association of member nations and as head of the Commonwealth.

The Commonwealth is a unique association. It has no assembly or Parliament of its own, no special cabinet or executive machinery and no central defence force. L. St. Laurent, the Prime Minister of Canada observed in course of a broadcast talk on the 10th January, 1951—"The Commonwealth is not a political unit. It is not an alliance. It has no common policy. The nations of the Commonwealth make their own separate decisions in world affairs and none of them is prepared



to give up that right. But they have, none the less, a community of interest on matters that really count. All the nations of the Commonwealth have a common attachment to certain political ideals, such as the maintenance of a large measure of freedom for the individual within the community, and the upholding of genuine control by the citizens over their governments."

This statement, however, cannot be accepted as wholly true. There is very little individual freedom in Pakistan and the citizens of that state have got very little control over their government.

The main channel of communication between the United Kingdom Government and the Governments of Canada, Australia, New Zealand, India, Pakistan, Ceylon, Ghana, Nigeria, the federation of Malaya, and the other members of the Commonwealth is the Commonwealth Relations office. Through it consultation and exchange of information takes place with the External Affairs Departments of these member states, either directly or through, the United Kingdom High Commissioners, on all subjects of mutual interest—foreign affairs, defence, economic co-operation and other matters. Each member-state is represented by a High Commissioner in London. Likewise in each of the capitals of member states there is a United Kingdom High Commissioner and in most cases a High Commissioner representing each of the other Commonwealth countries as well.

Co-operation between the members of the Commonwealth is visible in matters of finance, trade, defence, research, general and technical education social service etc. One of the best examples of co-operation is the council for technical co-operation, which was organized in 1950 by the Governments of Australia, Canada, Ceylon, India, New Zealand, Pakistan and the United Kingdom. Its purpose was to promote economic development in South and South-East Asia with a view to raising the living standards of the peoples of the area. The council organized the provision of experts, instructors and advisory missions to assist in planning, development or reconstruction, or for use in public administration, in health services, scientific research, in agricultural, industrial or other productive activities and in the training of personnel. To solve financial

problems the Commonwealth finance ministers meet from time to time. In July 1950 the Commonwealth Finance Ministers' conference considered the measures which should be taken by the countries included in the sterling area to increase their dollar resources and to reduce the expenditure of dollars. But the question of devaluation of sterling was not discussed, and not even hinted, though the devaluation actually took place in September, 1950. The finance ministers met in 1952 and agreed to stop the drain of the gold and dollar reserves. A similar meeting in 1959 resulted in greater investments by the United Kingdom in India.

## VI. Tensions within the Commonwealth

Signs of tension between the members of the Commonwealth began to appear soon after the accession India and Pakistan to the Commonwealth. India made vigorous protests in the General Assembly of the United Nations against the 'apartheid' or racial segregation policy of the Government of Union of South Africa. As the latter persisted to follow the segregation policy despite the protests of India, the Union of South Africa was ultimately forced to give up its long-standing membership of the Commonwealth.

Another source of severe tension between the two members of the Commonwealth, India and Pakistan, lies in the question over Kashmir. The ruler of Kashmir executed the Instrument of accession to India on the 26th October, 1947; but Pakistan wants to occupy Kashmir mainly on the ground that the majority of the people of that state are Muslims. The Kashmir problem is embittering the relation between the two neighbouring states. It is being discussed in the Security Council. The treatment accorded to the minority community in Pakistan is also causing much bitterness.

Earnest attempts have been made to secure some form of agreement with regard to the foreign policy to be pursued by the members of the Commonwealth. The British Government's action with regard to the Suez in October, 1956 roused adverse criticism not only from India, Pakistan and Ceylon, but also from Canada. The Suez crisis ultimately led to the resignation of

Sir Anthony Eden, the Prime Minister, who was responsible for undertaking such a policy. Lord Attlee in his Chichele Lectures at Oxford in 1960 said that co-ordination of foreign policy is not possible for the members of the Commonwealth. Some members, like India, are for non-alignment.

The attempt to evolve a Commonwealth citizenship has failed. Each member state is capable of determining in its own way what constitutes its citizenship. The British Immigration Act, which has come into force from July 1962, prevents persons from India, Pakistan and other newer members of the Commonwealth from entering the United Kingdom with a view to seek livelihood. Previously the Dominion citizens going into the United Kingdom were treated as U. K. citizens. By the British Nationality Act of 1948 this principle was abandoned. We have already pointed out that all the members of the Commonwealth have not set up fully responsible government. It is not true to say that democratic structure or the Rule of Law are common features which characterize the members of the Commonwealth. The common allegiance to the Crown is also lacking in the Republican members.

Another source of dissatisfaction of the under-developed member-states of the Commonwealth is the determination of the United Kingdom to enter the European Economic Community, as a member. The trade preferences which India, Ghana, Nigeria and other under-developed states are enjoying in Britain will vanish away.

There is frequent consultation between Britain and other members of the Commonwealth ; but there is not much consultation amongst these members themselves. It is apprehended by many that the Commonwealth will break down under the stress of these tensions. But Britain has shown such wonderful adaptability throughout her history that it may be hoped that she would be able to save the essential features of the Commonwealth organization.

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